

DRAFT PROJECT BOARD MINUTES

Project: North Herts Museum & Community Facility

Date: 15th July 2013

Classification: Confidential

In Attendance: Councillor Tony Hunter (NHDC), Councillor Tricia Cowley (NHDC Advisor), John Robinson (Project Executive), Neal Charlton, (BFAW Architect) Steve Crowley (Project Team), Vaughan Watson (Project Team), Ros Allwood (Project Team), David Leal-Bennett (Hitchin Town Hall Ltd), Brent Smith (Hitchin Town Hall Ltd, Technical Advisor)

Circulation: Those attending, Project Librarian,

Publication: Publication on the web to be withheld until construction contract has been awarded

1 Apologies

None received.

2 Roles & Responsibilities

The roles and responsibilities document relating to Project Management had been included on the agenda so that the ACF representative would understand the management methodology adopted for this project. DLB advised that not enough notice had been received for a representative to attend. However, it was noted that the dates had been advised in April 2013.

3 Matters Arising from the Minutes of the Last Meeting 14th May 2013

• Hitchin Town Hall Ltd Mobilisation Plan

DLB tabled a version at the meeting and agreed to forward an electronic copy to SC for inclusion within the overall project plan.

Action: DLB

• Deed of Variation

JR requested that this matter be progressed and all issues resolved, including the option agreements, by the end of the week so that this was not further impact on project revised deadlines. Recent correspondence from Foreman Law indicated that they were awaiting instructions from Hitchin Town Hall Ltd on the Option Agreement and awaiting feedback from ACF on the revised Development Agreement.

Action: DLB/BS

There being no outstanding action, the minutes were agreed.

3 Highlight Report No 6

The Highlight Report detailed all activity between 15th May through to 12th July 2013. The tasks completed to date were as follows:

Stage six 15/05/13 – 12/07/13	Date Due	Date Completed
Construction contract		
BFAW lead in time (3 weeks)	4 th June 2013	4 th June 2013
Design		
Review existing scheme for statutory compliance	7 th June 2013	7 th June 2013
Finalise design	7 th June 2013	7 th June 2013
Develop revised areas to stage E	21 st June 2013	9 th July 2013
Redevelop affected adjoining areas to stage E	25 th June 2013	25 th June 2013
Develop revised areas to stage F	9th July 2013	Ongoing
Redevelop affected adjoining areas to stage F	12 th July 2013	12 th July 2013
Exhibition Design		
Partial award	7 th June 2013	7 th June 2013
Collections Meeting (1)	11 th June 2013	11 th June 2013

SC advised that the only element of the programme not completed was to develop revised areas to stage F. This element of work had now be incorporated in to the next stage.

Issue Log

The table below is an extract from the Issue log (Appendix 2), this shows the issues that are currently relevant to this project. The issues identified in the Issue log are impacting on the project with regards to time, cost or quality, however, will be monitored and if required escalated to a risk.

Type	Description	Author	Status
Operational	Risk of delay to project because due to 15 Brand Street being included into the project and subject to ACF conditions.	SC	Ongoing
Procurement	Procurement of main contractor being awarded by 31 st March 2012. This is being controlled by BFAW. As the project is now including 15 Brand Street, BFAW will be negotiating with the preferred contractor on new design with an aim to award by 16 th August 2013	SC	Ongoing
Finance	Funding Arrangements & Acquisition of Brand Street Hitchin. Town Hall funding was assured when Council agreed to include 15 Brand Street in to the development. However, one of the donors has not confirmed their £50,000 donation, HTH are trying to resolve this matter.	SC	Ongoing

Property	HTH are currently awaiting final confirmation to secure 15 Brand Street. The Council has not received from HTH the draft options agreement that includes 15 Brand Street.	SC	Ongoing
Partnership Arrangements	Need to manage public and community expectation of project	SC	Ongoing
Partnership Arrangements	To ensure that the communication process between Hitchin Town Hall Ltd and North Herts District Council is adhered to, to assist the Project.	SC	Ongoing
Project Design	The Council and Hitchin Town Hall Ltd are not in agreement with the current access to the museum. An independent access assessment has been undertaken on the three options, this demonstrated that the external ramp option provides the best solution. However, Hitchin Town Hall Ltd prefer the internal ramp option.	SC	Ongoing

Funding

Hitchin Town Hall Ltd's ability **to fund 15 Brand** to meet the 16th August deadline for signing the revised Development Agreement ahead of award of a contract has been identified as a new risk (this is partly detailed in minute 3 (2nd Bullet point) above). Hitchin Town Hall Ltd have stated that their original funding package has now changed and that they are reliant on a donation of £50k from a donor who is yet to be convinced that his/her investment will produce tangible results. Hitchin Town Hall Ltd are working to try and persuade the individual that it will and NHDC have offered assistance in doing this. Hitchin Town Hall Ltd have stated that they have contingency arrangements in place for £25k, and that they are confident that they could raise the rest by other means. The Risk Log and Issue Log have been updated to reflect this.

DLB confirmed that funding has now been secured and that they were awaiting for a letter from NHDC advising them of the 'extras' the donor would see within the project. JR advised that he had spoken with Morag Norgan and confirmed with her that she would advise JR of any requirements once she had spoken with the donor. JR had not received a request from MN for a letter.
Action: DLB to ensure Deed of Variation and Option Agreements documentation are prepared and forwarded to NHDC Legal Team to ensure that the revised project deadline could be met. It was noted that the deadline for this was Friday 19th July 2013.

Design / Entrance to Museum

The Council has investigated alternative options to the entrance of the museum. These options were discussed at the design review meeting on 27th June 2013. An independent access assessment has been undertaken on the three options and also Planning have considered all options. The Council has written to Hitchin Town Hall explaining the preferred option for the Council which includes an external ramp, whilst Hitchin Town Hall favour the option with an internal ramp. Taking onboard all of the information that has been gathered on the different options and the risks to the project, the Project Executive has indicated the Council's preference would be to revert to the original scheme that Hitchin Town Hall have obtained planning approval for.

After some discussion, it was noted that the original scheme which, had planning consent, be proceeded with.

Action: NC to progress

Delay on Project

Due to the delay on agreement of the Stage E design, detailed design cannot be completed, and the design team is no longer able to meet the Mid-August deadline. The project team are currently aiming to revise the Bill of Quantities by 9th August, and complete negotiations with the preferred contractor on 30th August 2013. Appendix 4 provided the proposed project plan taking into account the project delay and this is replicated in 'Products Sue at the Next Stage' below.

There was discussion about the delay in the project and the causes. JR advised that this was due not only to do with agreeing the design but, with the approaches Hitchin Town Hall Ltd have made to NHDC consultants and architects which, in itself, has created further work streams. **This was not accepted by HTH, BF stated that at the last Design meeting they were aware that 16th August could not be met. DLB expressed serious concerns since this was not mentioned at the earlier July ACF meeting.** JR requested that an approach to ACF be made to request an additional two weeks to the deadline. It was also noted that, because ACF had taken three weeks to confirm their decision in terms of the loan/grant, this had taken the two weeks contingency allocated for this element of the project.

DLB raised concern that ACF would not accept such a delay and that they would withdraw from the project. DLB asked that consideration be given to signing the Development Agreement prior to conclusion of negotiations with the preferred contractor. VW cautioned against this and JR advised that the Development Agreement would need the figure of the contract to be included.

It was therefore requested that Hitchin Town Hall Ltd approach ACF with the request to extend their deadline so that a meeting of Project Board could be held on 4th September 2013 with a view to awarding contract on 5th September 2013.

Action: DLB/BS

Legal

At the time of writing the report the draft Option agreement for the purchase of 15 Brand Street had not been sent to the Council. This option agreement will contain the terms for the purchase of 15 Brand Street and it is essential that the Council is made aware of the terms of purchase. This document must be in an agreed form before the new Development Agreement can be signed by the Council and HTH Ltd.

This element had been discussed under funding arrangements and it was noted that DLB would instruct his legal team with a view to forwarding the relevant documentation to NHDC's legal team by 19th May **July** 2013.

Action: DLB

The Council has been approached by Hitchin Town Hall Ltd's legal representative regarding the Put Option. In the original development agreement, it was agreed that the Council would pay HTH Ltd the sum of

£250,000 in the event that the development did not complete by November 2016 or because of other 'Trigger Events'. This payment would be to reimburse HTH Ltd for the cost of purchasing 14 Brand Street. It has now been suggested by HTH Ltd that the Council should pay HTH Ltd the sum of £350,000, if the development does not complete by March 2017, in order to cover the cost of purchasing both 14 and 15 Brand Street. **DLB stated that it was implied and NHDC were advised early April.**

DLB advised that it would indeed be another £190,000 in addition to the £250,000 already agreed. JR confirmed that this request had not been made to NHDC when Council agreed the inclusion of 15 Brand Street in April 2013. After some discussion, Councillor Hunter advised that such a request would need to be put to the Council as a further financial risk for decision as to whether it wished to proceed.

In doing this, this would put the project back further as the next meeting of Council would be in September. Another option would be to Hitchin Town Hall Ltd to indemnify themselves for £190,000 risk at their own cost. Action: DLB/BS to advise on Hitchin Town Hall Ltd's position **but not able as HTH was a charity.**

Products Due at Next Stage

Next stage 15/07/13 – 30/08/13 (stage seven)	Completed by
Construction contract	
Develop revised areas to stage F	26 th July 2013
Revise Bill of Quantities	9 th August 2013
Negotiate with preferred contractor	30 th August 2013
Exhibition Design	
Collections Meeting (2)	16 th July 2013

In considering the above, Project Board noted that there was no further contingency built in to this stage of the timetable and that this therefore presented a high risk to the project.

Risk Log

The risk log was reviewed and the following changes made:

- Item No 3 Change probability score to 3 which would make the overall score 8 and would therefore become Red
- Item No 28 Change probability score to 2 which would make the overall score 8 and would therefore become Red

Items no 4 and 35 remained red and item no 36 (labelled at 35 on risk log) was no longer red as the design had been agreed earlier on in the meeting. Action: SC/RA to update the risk log

4 Recommendations

1. Sign off RIBA stage E design – Agreed

2. To approve the Project Risk Log – Agreed subject to changes above.
3. To approve the Project Issue Log – Agreed
4. To approve completion of stage six. (Item 4) – Agreed
5. To allow stage seven to commence. (Item 6) – Agreed subject to ACF's agreement that they will extend the deadline and, Hitchin Town Hall Ltd's ability to indemnify themselves for the purchase of 15 Brand Street

David Leal-Bennett

From: David Leal-Bennett [REDACTED]
Sent: 11 December 2013 09:16
To: 'John Robinson'; 'Vaughan Watson'
Cc: 'Sharon Nahal'; 'Brent Smith'; 'Rosemary Read'; 'Stephen Pike'
Subject: Project Board Minute corrections - see below

I thought these were passed to you but they seem to have been lost and have not been included. For the record HTH expect minutes to accurately reflect what was stated at meetings and by all participants.

Please amend the Project Board Minutes as follows:

Project Board Minutes - corrections of 15th July 2013

Funding

delete "to meet the 16th August has been identified"
To read "ability to fund 15 Brand has been identified"

Delay in Project

To insert in second paragraph after ".... work streams."

"This was not accepted by HTH, BF stated that at the last Design meeting they were aware that 16th August could not be met. DLB expressed serious concerns since this was not mentioned at the earlier July ACF meeting."

Legal

Second paragraph date to be July not May - can't go back in time!

Page 5

Insert after first paragraph " DLB stated that it was implied and NHDC were advised early April"

Page 5 First action point

"DLB/BS to advise position " add " but not able as HTH was a charity."

Regards

David



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28-Feb-14 Minutes dispute - email trail

David,

As my final sentence says, the annotated and fuller version of the minutes (which were attached to my email) will be retained for future reference but, in my view, the original minutes portrayed an accurate representation of the discussions at the meeting and therefore remain my record of the meeting.

John

From: David Leal-Bennett [redacted]
Sent: 18 March 2014 16:48
To: John Robinson
Cc: 'Morag Norgan'; david-parsley@north-herts.gov.uk; 'Brent Smith'; rosemaryread@north-herts.gov.uk; 'Stephen Pike (work)'
Subject: RE: Minutes 28-Feb-14

John

What on earth does this mean? Are the attached minutes now the official version or are you retaining the original ones which we disputed with these one annotated?

David Leal-Bennett

From: John Robinson [<mailto:John.Robinson@north-herts.gov.uk>]
Sent: 18 March 2014 15:58
To: David Leal-Bennett
Cc: Morag Norgan; david-parsley@north-herts.gov.uk; Brent Smith; rosemaryread@north-herts.gov.uk; Stephen Pike (work)
Subject: FW: Minutes 28-Feb-14

David,

I have now reviewed your notes which included a number of changes that were not highlighted. I have included a number of additional comments underlined in blue or in side boxes where we disagreed on your assertions as a matter of record. That having been said, I do not think there is any merit in further debate about the content of the minutes as their content meaning in general terms is very clear and this was more fully considered in the Special Project Board meeting on 10th March 2014. I will therefore not be reissuing the minutes but will retain the annotated and fuller version for future reference.

John

From: David Leal-Bennett [<mailto:dlb@syssol.net>]
Sent: 10 March 2014 12:46
To: John Robinson
Cc: 'Morag Norgan'; 'David Parsley'; 'Brent Smith'; 'Rosemary Read'; 'Stephen Pike'
Subject: Minutes 28-Feb-14

28-Feb-14 Minutes dispute - email trail

John

We have reviewed the 'draft' minutes of this meeting and find them a little sparse on detail in certain areas.

Since this was a very important meeting, all of those present from HTH have reviewed them in detail, which should be clear from the different texts, and they are now fuller reflecting the issues covered.

Please find attached an amended version.

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NORTH HERTFORDSHIRE DISTRICT COUNCIL

Minutes of Meeting for North Hertfordshire Museum / Community Facility

Design & Construction Team Meeting

Special Meeting Following formal notice of Dispute from HTH Ltd

Held on: Friday 28th February 2014 11:00am

Location: District Council Offices Committee Room 2

Present

Name	Initials	Company Initials
John Robinson	JR	North Hertfordshire District Council NHDC
Cllr Tony Hunter	Cllr T	North Hertfordshire District Council NHDC
Steve Crowley	SC	North Hertfordshire District Council NHDC
Gavin Ramtohal	GR	North Hertfordshire District Council NHDC
Keith Gayner	KG	North Hertfordshire District Council NHDC
Sharon Nahal	SN	North Hertfordshire District Council NHDC
David Leal-Bennett	DLB	Hitchin Town Hall Ltd HTHL
Brent Smith	BS	Hitchin Town Hall Ltd HTHL
Morag Norgan	MN	Hitchin Town Hall Ltd HTHL
David Parsley	DP	Hitchin Town Hall Ltd HTHL
David Morgan	DM	Legal Representative HTHL
Neal Charlton	NC	Buttress Fuller Alsop Williams BFAW

Apologies: None

Introductions

Introductions received from all attendees.

1.0 Communication / Confirmation from ACF

1.1 JR referred to the letter of dispute from HTHL dated 25th February 2014 which suggests NHDC are in breach of Listed Building Consent and legal breach of the Development Agreement between NHDC and Hitchin Town Hall Ltd. JR asked HTHL if they had anything more to add.

1.2 DP advised that he does not have the history to the project as has just recently joined to the team at Hitchin Town Hall Ltd and stated he had reviewed the Approved Documents under Schedule 2. The Development together with the design drawings and specifications.

DP highlighted the Liaison Arrangements at Clause 16 of the Development Agreement and the wording of 16.1 which requires that 'The Council will manage the Development in accordance with the diagram appearing at Annex 5 to ensure that HTH Ltd has appropriate input into the management of the development'. DP referred to Clause 16.2b that states - 'if the matter relates to design and construction of the development, it shall be referred to the design and construction project team detailed in Annex 5'.

~~DP made reference to Annex 5 of the Development A being Hitchin Town Hall Ltd Development Requirements and annex 5 which highlights a liaison process and appropriate input to the management process under a partnership working agreement and Project Team~~

DP confirmed that under the Project Management described in Annex 5, the Design & Construction (Project Team) had not been constituted, and the required 'programmed meetings' had not been arranged or held. The only meeting held since signing the agreement which considered design was that held on 8th January 2014 to agree changes to the cloakroom steelwork etc. HTH were not copied in with Minutes of Site Project Meetings held with the Contractor, they had not been provided with a Project Programme nor any information relating to design elements which are the responsibility of the Contractor. DP stated that NHDC were clearly not managing the Contract in accordance with Clause 16.

DP expressed concerns on how the project was being managed and questioned the lack of HTHL involvement in the partnership working arrangements post signing of the Development Agreement September 2013; and failure to comply with Prince 2 regarding the inclusion of a major stakeholder.

JR explained that regular Design Team meetings were held on a number of occasions at which drawings were considered primarily on 3rd October 2012, 17th December 2012, 23rd January 2013, 7th May 2013, 6th June 2013, 27th June 2013, 30th October 2013 (note: no minutes supplied) and 8th January 2014. DP Questioned programmed meetings post signature as there have been none! DP asked is there a program of meetings?

1.3 DLB stated HTH had a fundamental issue with the process of how the project has been handled and managed. DLB Stated the first set of drawings Hitchin Town Hall Ltd received were in November 2013, some of which were dated November 2012. DLB stated that it was important that we get the process sorted out now and that we have Design meetings and Project Board meetings. DP reported Hitchin Town Hall Ltd had been involved in the one meeting so far to discuss a variation relating to the ground floor cloakroom. JR again referred to the series of design meeting at which plans were considered and the offer of providing further details given.???

1.4 DP referenced Schedule 2 the Development highlighting clause 1.3 "the Council notifies Hitchin Town Hall Ltd of the variations within 10 Working Days thereof and provides two sets of the relevant Approved Documents as revised from time to time".

1.5 DP referenced the HTH Ltd Development Requirements document incorporated in the Development Agreement at Appendix 6. Specifically the reference under the heading Sound Attenuation which states 'There is currently a problem with the break out of sound from the building (particularly the rear wall and roof) which limits its use for concerts and other events. Sound attenuation shall be provided to mitigate this problem as per the Design and Access Statement page 12, acoustic screen to be installed.'

DP noted that the BFAW 93 page Design and Access Statement states - 'The second intervention is the addition of an acoustic screen to the stage - reducing its capacity and insulating the stage from the dwellings at the rear of the complex. This stud wall would be acoustically isolated and ultimately reversible to recreate the full stage capacity'

DP then referred to Item 1.4 of Schedule 2 of the Development Agreement which states - 'The Development when built in accordance with the variation will still meet the HTH Limited Development Requirements'

DP stated that as the block wall did not accord with the requirements for a reversible acoustic screen as amplified and detailed by the BFAW Design and Access Statement, the building when built WILL NOT meet the HTH Limited Development Requirements and NHDC are therefore in breach of the Development Agreement signed between NHDC and HTH Ltd.

~~DP referenced BFAW Design & Access Statement (Annex 6 of the Development Agreement) stating construction centres on the separation of the stage and the museum storage area with a stud wall which would be acoustically isolated, and ultimately reversible to recreate the full stage capacity; not a division wall built from concrete block construction.~~

1.6 JR stated he understood the point being made in respect to the Design Team meetings but noted that the Design Team had met on a number of occasions as designs were developed and additionally that arrangements for an Operational Team were now being agreed with Hitchin Town Hall Ltd as the project moved forward.

1.7 JR asked NC to provide his response with regards to the dispute. NC stated there are two ways of producing the two storey storage element to the rear of the stage. The first, to insert a steel frame to support the upper mezzanine floor. The second to utilise the existing block wall and to continue the wall up through the cut out section of the stage but keeping the stage structure and to generate the same sound buffer and separation. The intention is to create a wall of some substance due to the floor above it but needs to be a simple block work that is dismountable. The work currently being undertaken to the stage was within the principles of minimum intervention to the stage as per Listed Building Consent. NC stated a three storey steel structure would be more complex and JR confirmed more expensive.

1.8 JR made reference to NHDC's statutory duty to achieve the principles of Best Value and the need to demonstrate this in every spending decision. The Development Agreement acknowledged NHDC must act within its own decision making framework, including compliance with statutory requirements. DLB stated Hitchin Town Hall Ltd do not accept this argument.

1.9 NC made reference to the BFAW Design and Access Statement submitted with the first planning application to gain Listed Building Consent together with Planning Application and A1 scale plan drawings. DLB emphasised there are no references or statements that suggest the stage would be cut through **and a concrete block wall built**. JR accepted this point but commented that this did not preclude this being acceptable.

1.10 DP stated the Design and Access Statement defines the stud partition so why is it HTHL have not received a notice of variation. JR suggested the design approach had been evolving over a considerable period and that the 'variations' appeared to have been amalgamated in to the design without being highlighted by either party as being of concern. NC advised that at previous Design Team meeting drawings clearly displaying the wall has 'hatched' which is the British standard for a block wall. In addition, NC confirmed that BS and DLB had been given copies of the A1 drawings to take away with them so that they could provide further comments.

BS & DLB stated that they had never had full A1 drawings. NC also made the offer at that meeting for Hitchin Town Hall Ltd to contact him to request copies of any the plans as there were several hundred. NC displayed the current drawings identifying the stage area and method of construction. **DLB stated that this was not the case and HTH were**

never were permitted to take A1 drawings away and NHDC were absolutely restrictive on disclosing documents and drawings.

1.11 Cllr H, if the construction method used was steelwork and stud wall would you still have to cut through the stage. DP stated it is conventional and straightforward construction method and Hitchin Town Hall Ltd do not understand why it was not used, unless a cost factor.

NC accepted that steelwork was like Meccano and could be used and apologised that he did not have every iteration of all the drawings with him.

JR stated that he had some sympathy that the detail of that being stud wall or block work and that the discrepancy and the importance of that discrepancy wasn't clear to him as we collectively went through the detailed design reviews. It was a matter of fact that it wasn't picked out in any of the meetings, and from the NHDC side it wasn't pointed out as a significant change.

1.12 JR stated that reversing the concrete block work to steelwork and stud wall this would result in unnecessary delay and additional costs to the project. DLB stated that Hitchin Town Hall Ltd had asked NHDC previously to consider alternative museum storage space which offered a more practical solution. JR advised this suggestion had been considered a number of times but had not been fully worked through and was not affordable or practical.

1.13 NC stated that NHDC's Planning / Conservation Officer have been made aware of Hitchin Town Hall Ltd concerns, had visited the site that morning and had been asked to comment on whether we are in breach of drawings / access design consent. JR confirmed that as soon the Planning Officer has clarified the situation he would convey the outcome.

Action: JR

1.14 DP again emphasised the importance of Hitchin Town Hall Ltd and their involvement in the process and participation at regular Design Team meetings. JR advised that Design Team meeting were required to be 'programmed' rather than 'regular' and that a number had been held between October 2012 and January 2014.

1.15 DP raised questions relating to the location of the ventilation plant/duct work in and around the stage area and the blowing of air directly on to the audience in the front rows.

1.16 NC confirmed that a number of options had been considered with regards to the ventilation system and that these had been considered by the Design Team. The front row of people will be sat further back from the stage. 1.17 DP the ventilation grills go right down to floor level.

1.18 DLB stated he had never seen the ducting / ventilation plans.

1.19 DLB asked whether there would be noise from the ventilation fans. NC confirmed that these were directly above the stage in a separate space there may be some sound and vibration.

1.20 DP stated by any stretch of the imagination not ideal.

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1.21 JR confirmed that he will now need to consider the next steps and that a proposed approach from Planners and BFAW would be forwarded following advice ahead of Project Board.

Action: JR

1.22 DP emphasised looking at the practical issues.

1.23 MM requested the planning advice to be provided in writing.

1.24 NC referred to intervention with regards to the balcony in the hall and requested that Hitchin Town Hall Ltd take a closer examination of the drawings. DP confirmed he had examined the drawing has no problem with the detail.

1.25 NC referred to the shared area and how this area will operate in conjunction with the museum design. NC asked HTHL to look at this area as a whole but structurally as per contract drawings.

1.26 DP stated that Hitchin Town Hall Ltd are not professional managers of community halls and would not have the expertise to offer advice on required services. DP confirmed HTHL have appointed an experienced events operator who will look at the service requirements to future proof the hall. JR advised that as previously offered, NHDC had a number of qualified and experienced facility managers and would be happy to provide assistance and that any additional Hitchin Town Hall Ltd requirements would need to be affordable within the current budget for the project.

1.27 NC confirmed that Borrás Construction Ltd have appointed a mechanical and electrical service provider. DP stated Hitchin Town Hall Ltd would respond shortly. It was noted that any comments needed to be with NHDC within two weeks.

Action: Hitchin Town Hall Ltd

1.28 JR confirmed he was happy to schedule meetings as required by the construction/design timetable.

Action: JR

1.29 DM stated if Hitchin Town Hall Ltd do take the route of legal action Hitchin Town Hall Ltd will need to go back to ACF.

1.30 JR stated this was a very serious issue for NHDC with regards cost, risk and time and will need to be reported accordingly.

1.31 JR to call an emergency Project Board "very early part of next week" as soon as practicable and hopefully early the following week taking on board advice from the Planning Officer.

JR gave a synopsis:

Failure to make wall reversible.

Failure to obtain listed building consent.

Trying to get some professional advice for the council so it understands what its options are.

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BS referenced that words in the D&A were just some words to get consent and then NHDC can do what they like!

NC - Mentioned the gallery and screen front should be looked at, DP said he had identified this and his first pass is that it accords with everything that has been said.

NC - Mentioned the shared area and how cafe to operates plus the detail of intro to museum to fit our and design with the need to look at the space. i.e. that structurally and volume it is in line with what is being designed.

BS Front wall position and would like a presentation of what is happening which would be very useful, rather than going through the many drawings.

TH - Mentioned the positioning of the ducting in relation to the stage.

DP - Another area looking at is the services side and various containment routes. He was looking at the backbone requirements we have on board an acoustic and event operator and looking to future proof what is required.

NC If changes to be made now is the time DP We are on the case and in two weeks we can sit down and discuss the backbone.

DLB - Stated that o deal with these and other issues it is really important and that, going forward, we agree a set of structured meetings.

1.32 DLB would like BS and DP to attend Project Board.

Action: JR

1.33 DLB stated Hitchin Town Hall Ltd's position on this matter has not changed but will consider and take on board the Conservation Officer's **advice but it was the breach of contract that was the important issue.**

2. Quotations of Additional Works

JR requested that Hitchin Town Hall Ltd ensure that any requests for additional works is presented fully to NHDC for consideration. Such items to do deviate BFAW's time to the project and that of officers especially where quotations are being sought from Borrás. NHDC is happy to consider any suggestions but it must be noted that this does have an element of time and cost implications to the project.

3. Site Visits & Protocols

JR reiterated that in line with the Development Agreement, Hitchin Town Hall Ltd have to provide reasonable notice to attend site and that there must always be a Council Officer in attendance at such visits.

It was noted that the recent request to visit on site only came a couple of hours before Hitchin Town Hall Ltd turned up on site and although this was considered reasonable because of the urgency, entering the site without officers present was not.

DLB requested that a standing date and time be arranged on a weekly basis for Hitchin Town Hall Ltd to attend site. SC advised that he would look in to this but that it may be subject to change as it was dependant upon works currently underway on site.

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DM restated the need for programmed meetings of the Design and Construction Project Team at which the essential contents of Annex 6 of the Development Agreement—HTH Ltd. Development Requirements—could be addressed in an endeavour to avoid a repeat of the present dispute in relation to other elements.

Action: SC

In addition, SC requested that, in future, Hitchin Town Hall Ltd forward any photos they take whilst on site and explained the reasoning, so that these could be approved by Borras.

Action: Hitchin Town Hall Ltd

4. Communications

JR advised that there had been a number of further instances where DLB had contacted senior Councillors and the Chief Executive on matters relating to the project often without copying him in. JR advised that Hitchin Town Hall Ltd needed to adhere to the liaison arrangements outlined in the Development Agreement and to ensure that any contact is through him or other approved officers in the first instance. DLB Advised that HTH did not have a problem with JR talking with our community groups and that sometimes communication at a high level could be very useful.

Close of Meeting 12:25 hrs

Minutes Taken By: Keith Gayner

Title: Parks and Open Spaces Officer – Contracts and Major Projects

Signed:

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NORTH HERTFORDSHIRE DISTRICT COUNCIL

**Minutes of Meeting for North Hertfordshire Museum / Community Facility
Design & Construction Team Meeting**

Held on: Friday 28th February 2014 11:00am

Location: District Council Offices Committee Room 2

Present

Name	Initials	Company	Initials
John Robinson	JR	North Hertfordshire District Council	NHDC
Cllr Tony Hunter	Cllr T	North Hertfordshire District Council	NHDC
Steve Crowley	SC	North Hertfordshire District Council	NHDC
Gavin Ramtohel	GR	North Hertfordshire District Council	NHDC
Keith Gayner	KG	North Hertfordshire District Council	NHDC
Sharon Nahel	SN	North Hertfordshire District Council	NHDC
David Leal-Bennett	DLB	Hitchin Town Hall Ltd	HTHL
Brent Smith	BS	Hitchin Town Hall Ltd	HTHL
Morag Norgan	MN	Hitchin Town Hall Ltd	HTHL
David Parsley	DP	Hitchin Town Hall Ltd	HTHL
David Morgan	DM	Legal Representative	HTHL
Neal Charlton	NC	Buttress Fuller Alsop Williams	BFAW

Apologies: None

Introductions

Introductions received from all attendees.

1.0 Communication / Confirmation from ACF

- 1.1 JR referred to the letter of dispute from HTHL dated 25th February 2014 which suggests NHDC are in breach of Listed Building Consent and legal breach of the Development Agreement between NHDC and Hitchin Town Hall Ltd.

JR asked HTHL if they had anything more to add.

- 1.2 DP advised that he does not have the history to the project as has just recently joined to the team at Hitchin Town Hall Ltd and stated he had reviewed the Approved Documents under Schedule 2. The Development together with the design drawings and specifications. DP made reference to Hitchin Town Hall Ltd development requirements which highlights a liaison process and appropriate input to the management process under a partnership working agreement under Annex 5 Project Team.

DP highlighted the Liaison Arrangements at Clause 16 of the Development Agreement and the wording of 16.1 which requires that 'The Council will manage the Development in accordance with the diagram appearing at Annex 5 to ensure that HTH Ltd has appropriate input into the management of the development' DP referred to Clause 16.2b that states - 'if the matter relates to

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design and construction of the development, it shall be referred to the design and construction project team detailed in Annex 5

DP confirmed that under the Project Management described in Annex 5, the Design & Construction (Project Team) had not been constituted, and the required 'programmed meetings' had not been arranged or held. The only meeting held since signing the agreement which considered design was that held on 8th January 2014 to agree changes to the cloakroom steelwork etc. HTH were not copied in with Minutes of Site Project Meetings held with the Contractor, they had not been provided with a Project Programme nor any information relating to design elements which are the responsibility of the Contractor. DP stated that NHDC were clearly not managing the Contract in accordance with Clause 16. This was not agreed.

Comment [SR1]: This was not accepted by NHDC

Comment [SR2]: These have been requested by Hitchin Town Hall Ltd but NHDC had declined to provide them as it remains responsible for managing the contract

DP expressed concerns on how the project was being managed and questioned the lack of HTHL involvement in the partnership working arrangements post signing of the Development Agreement September 2013; and failure to comply with Prince 2 regarding the inclusion of a major stakeholder.

JR explained that regular Design Team meetings were held on a number occasions at which drawings were considered primarily on 3rd October 2012, 17th December 2012, 23rd January 2013, 7th May 2013, 6th June 2013, 27th June 2013, 30th October 2013 (note: no minutes supplied) (These were emailed to DLB and BS on 9th December 2013) and 8th January 2014.

Formatted: Superscript

DP Questioned programmed meetings post signature as there have been none! DP asked Is there a program of meetings? These were currently being programmed.

- 1.3 DLB stated he had a fundamental issue with the process in place and how the process is being managed. DLB stated the first set of drawings Hitchin Town Hall Ltd received were in November 2013, the drawings were dated November 2012. DLB stated that it was important that we get the process sorted out now and that we have Design meetings and Project Board meetings. DP DLB insisted that weekly Design Team meetings should be held. DLB reported Hitchin Town Hall Ltd had been involved in the one meeting so far to discuss a variation relating to the ground floor cloakroom. JR again referred to the series of design meeting at which plans were considered and the offer of providing further details given.

- 1.4 DP referenced Schedule 2 the Development highlighting clause 1.3 "the Council notifies Hitchin Town Hall Ltd of the variations within 10 Working Days thereof and provides two sets of the relevant Approved Documents as revised from time to time".

- 1.5 DP referenced BFAW Design & Access Statement (Annex 6 of the Development Agreement) stating construction centres on the separation of the stage and the museum storage area with a stud wall which would be acoustically isolated, and ultimately reversible to recreate the full stage capacity; not a division wall built from concrete block construction.

DP referenced the HTH Ltd Development Requirements document incorporated in the Development Agreement at Appendix 6.

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Specifically the reference under the heading Sound Attenuation which states 'There is currently a problem with the break out of sound from the building (particularly the rear wall and roof) which limits its use for concerts and other events. Sound attenuation shall be provided to mitigate this problem as per the Design and Access Statement page 12, acoustic screen to be installed.'

DP noted that the BFAW 93 page Design and Access Statement states - 'The second intervention is the addition of an acoustic screen to the stage - reducing its capacity and insulating the stage from the dwellings at the rear of the complex. This stud wall would be acoustically isolated and ultimately reversible to recreate the full stage capacity'

DP then referred to Item 1.4 of Schedule 2 of the Development Agreement which states - 'The Development when built in accordance with the variation will still meet the HTH Limited Development Requirements'

DP stated that as the block wall did not accord with the requirements for a reversible acoustic screen as amplified and detailed by the BFAW Design and Access Statement, the building when built WILL NOT meet the HTH Limited Development Requirements and NHDC are therefore in breach of the Development Agreement signed between NHDC and HTH Ltd.

- 1.6 JR stated he understood the point being made in respect to the Design Team meetings but noted that the Design Team had met on a number of occasions as designs were developed and additionally that arrangements for an Operational Team were now being agreed with Hitchin Town Hall Ltd as the project moved forward.
- 1.7 JR asked NC to provide his response with regards to the dispute. NC stated there are two ways of producing the two storey storage element to the rear of the stage. The first, to insert a steel frame to support the upper mezzanine floor. The second to utilise the existing block wall and to continue the wall up through the cut out section of the stage but keeping the stage structure and to generate the same sound buffer and separation. The intention is to create a wall of some substance due to the floor above it but needs to be a simple block work that is dismountable. The work currently being undertaken to the stage was within the principles of minimum intervention to the stage as per Listed Building Consent. NC stated a three storey steel structure would be more complex and JR confirmed more expensive.
- 1.8 JR made reference to NHDC's statutory duty to achieve the principles of Best Value and the need to demonstrate this in every spending decision. The Development Agreement acknowledged NHDC must act within its own decision making framework, including compliance with statutory requirements. DLB stated Hitchin Town Hall Ltd do not accept this argument.
- 1.9 NC made reference to the BFAW Design and Access Statement submitted with the first planning application to gain Listed Building Consent together with Planning Application and A1 scale plan drawings. DLB emphasised there are no references or statements that suggest the stage would be cut through **and a concrete block wall built**. JR accepted this point but commented that this did not preclude this being acceptable.

DRAFT

DLB stated the Design and Access Statement defines the stud partition so why is it HTHL have not received a notice of variation. JR suggested the design approach had been evolving over a considerable period and that the 'variations' appeared to have been amalgamated in to the design without being highlighted by either party as being of concern. NC advised that at previous Design Team meeting drawings clearly displaying the wall has 'hatched' which is the British standard for a block wall. In addition, NC confirmed that BS and DLB had been given copies of the A1 drawings to take away with them so that they could provide further comments. **BS & DLB stated that they had never had full A1 drawings.** This was not accepted by NHDC or NC. NC also made the offer at that meeting for Hitchin Town Hall Ltd to contact him to request copies of any the plans as there were several hundred. NC displayed the current drawings identifying the stage area and method of construction. **DLB stated that this was not the case and HTH were never were permitted to take A1 drawings away and NHDC were absolutely restrictive on disclosing documents and drawings.** This was not accepted as an accurate portrayal by NHDC.

- 1.10 Cllr H, if the construction method used was steelwork and stud wall would you still have to cut through the stage. PD stated it is conventional and straightforward construction method and Hitchin Town Hall Ltd do not understand why it was not used, unless a cost factor.

- 1.11 JR stated that reversing the concrete block work to steelwork and stud wall this would result in unnecessary delay and additional costs to the project.

DLB stated that Hitchin Town Hall Ltd had asked NHDC previously to consider alternative museum storage space which offered a more practical solution. JR advised this suggestion had been considered a number of times but had not been fully worked through and was not affordable or practical.

NC accepted that steelwork was like Meccano and could be used and apologised that he did not have every iteration of all the drawings with him.

JR stated that he had some sympathy that the detail of that being stud wall or block work and that the discrepancy and the importance of that discrepancy wasn't clear to him as we collectively went through the detailed design reviews. It was a matter of fact that it wasn't picked out in any of the meetings, and from the NHDC side it wasn't pointed out as a significant change.

- 1.12 NC stated that NHDC's Planning / Conservation Officer have been made aware of Hitchin Town Hall Ltd concerns, had visited the site that morning and had been asked to comment on whether we are in breach of drawings / access design consent. JR confirmed that as soon the Planning Officer has clarified the situation he would convey the outcome.
Action: JR

- 1.13 DP again emphasised the importance of Hitchin Town Hall Ltd and their involvement in the process and participation at regular Design Team meetings. JR advised that Design Team meeting were required to be 'programmed' rather than 'regular' and that a number had been held between October 2012 and January 2014.

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- 1.14 DP raised questions relating to the location of the ventilation plant/duct work in and around the stage area and the blowing of air directly on to the audience in the front rows.
- 1.15 NC confirmed that a number of options had been considered with regards to the ventilation system and that these had been considered by the Design Team. The front row of people will be sat further back from the stage.
- 1.16 DP the ventilation grills go right down to floor level.
- 1.17 DLB stated he had never seen the ducting / ventilation plans.
- 1.18 DLB asked whether there would be noise from the ventilation fans. NC confirmed that these were directly above the stage in a separate space there may be some sound and vibration.
- 1.19 DP stated by any stretch of the imagination not ideal.
- 1.20 JR confirmed that he will now need to consider the next steps and that a proposed approach from Planners and BFAW would be forwarded following advice ahead of Project Board.
Action: JR
- 1.21 DP emphasised looking at the practical issues.
- 1.22 MM requested the planning advice to be provided in writing.
- 1.23 NC referred to intervention with regards to the balcony in the hall and requested that Hitchin Town Hall Ltd take a closer examination of the drawings. DP confirmed he had examined the drawing has no problem with the detail.
- 1.24 NC referred to the shared area and how this area will operate in conjunction with the museum design. NC asked HTHL to look at this area as a whole but structurally as per contract drawings.
- 1.25 DP stated that Hitchin Town Hall Ltd are not professional managers of community halls and would not have the expertise to offer advice on required services. DP confirmed HTHL have appointed an experienced events operator who will look at the service requirements to future proof the hall. JR advised that as previously offered, NHDC had a number of qualified and experienced facility managers and would be happy to provide assistance and that any additional Hitchin Town Hall Ltd requirements would need to be affordable within the current budget for the project.
- 1.26 NC confirmed that Borrás Construction Ltd have appointed a mechanical and electrical service provider. DP stated Hitchin Town Hall Ltd would respond shortly. It was noted that any comments needed to be with NHDC within two weeks.
Action: Hitchin Town Hall Ltd
- 1.27 JR confirmed he was happy to schedule meetings as required by the construction/design timetable.
Action: JR

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- 1.28 DM stated if Hitchin Town Hall Ltd do take the route of legal action Hitchin Town Hall Ltd will need to go back to ACF.
- 1.29 JR stated this was a very serious issue for NHDC with regards cost, risk and time and will need to be reported accordingly.
- 1.30 JR to call a meeting of Project Board as soon as practicable and hopefully early the following week taking on board advice from the Planning Officer.

JR gave a synopsis:

Failure to make wall reversible.

Failure to obtain listed building consent.

Trying to get some professional advice for the council so it understands what its options are.

BS referenced that words in the D&A were just some words to get consent and then NHDC can do what they like!

NC - Mentioned the gallery and screen front should be looked at, DP said he had identified this and his first pass is that it accords with everything that has been said.

NC - Mentioned the shared area and how cafe to operates plus the detail of intro to museum to fit our and design with the need to look at the space. i.e. that structurally and volume it is in line with what is being designed.

BS Front wall position and would like a presentation of what is happening which would be very useful, rather than going through the many drawings.

TH - Mentioned the positioning of the ducting in relation to the stage.

DP - Another area looking at is the services side and various containment routes. He was looking at the backbone requirements we have on board an acoustic and event operator and looking to future proof what is required.

NC If changes to be made now is the time DP We are on the case and in two weeks we can sit down and discuss the backbone.

DLB - Stated that to deal with these and other issues it is really important and that, going forward, we agree a set of structured meetings.

- 1.31 DLB would like BS and DP to attend Project Board.
Action: JR

- 1.32 DLB stated Hitchin Town Hall Ltd's position on this matter has not changed but will consider and take on board the Conservation Officer's advice but it was the breach of contract that was the important issue.

2. Quotations of Additional Works

JR requested that Hitchin Town Hall Ltd ensure that any requests for additional works is presented fully to NHDC for consideration. Such items to do deviate BFAW's time to the project and that of officers especially where quotations are being

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sought from Borrás. NHDC is happy to consider any suggestions but it must be noted that this does have an element of time and cost implications to the project.

3. Site Visits & Protocols

JR reiterated that in line with the Development Agreement, Hitchin Town Hall Ltd have to provide reasonable notice to attend site and that there must always be a Council Officer in attendance at such visits.

It was noted that the recent request to visit on site only came a couple of hours before Hitchin Town Hall Ltd turned up on site and although this was considered reasonable because of the urgency, entering the site without officers present was not.

DLB requested that a standing date and time be arranged on a weekly basis for Hitchin Town Hall Ltd to attend site. SC advised that he would look in to this but that it may be subject to change as it was dependant upon works currently underway on site.

Action: SC

In addition, SC requested that Hitchin Town Hall Ltd forward any photos they had taken whilst on site so that these could be approved by Borrás.

Action: Hitchin Town Hall Ltd

4. Communications

JR advised that there had been a number of further instances where DLB had contacted senior Councillors and the Chief Executive on matters relating to the project often without copying him in. JR advised that Hitchin Town Hall Ltd needed to adhere to the liaison arrangements outlined in the Development Agreement and to ensure that any contact is through him or other approved officers in the first instance.

Close of Meeting 12:25 hrs

Minutes Taken By: Keith Gayner

Title: Parks and Open Spaces Officer – Contracts and Major Projects

Signed: 



7. Failure to hold a full design review.

- a. A promise was made to hold separate briefing meetings for councillors and the community groups and that there would be a full design review. This has never happened.
- b. We have constantly been told that there would be an opportunity for input into the design process but this has never happened.
- c. We were promised that the aspects of the design which were of concern to us would be looked at after the signing of the second Development Agreement on 9th September 2013 but this never happened.

HTH have constantly requested information on what was being proposed for the Town Hall but Mr Robinson has always refused to let us have detail, insisting that his brief was to deliver what he considered "appropriate". To this end we fought (we do not use the word lightly) for the inclusion of our "Essential Requirements" which were watered down considerably.



8. Libellous email re our lawyers Foreman Laws

Appendix 'B' - This email, accused our legal representative Mr David Morgan of Foreman Laws, of delaying the project. Since this questioned the professional integrity of this prominent firm of lawyers, Mr Morgan resigned as he did not wish to have any further dealings with Mr Robinson. At an urgent follow up meeting, Mr Robinson endeavoured to exonerate himself by blaming an assistant who had sent the email on his behalf. Only later was Mr Morgan persuaded to rejoin the HTH team.

This caused considerable issues and was one of the early indications of the modus operandi of Mr Robinson.

File note re Foreman Laws 26-Oct-11

Note from John Robinson to Morag Norgan 26 October 2011

"Morag

Notes from this morning as promised. They are marked draft but if you could confirm they are a working draft and pass to David M that should let legal reps get on with things

I understand from Katie that they are still (Katie and David) questioning whether the meeting is worthwhile until we have concluded discussion on the DA. Katie will be reviewing the change grid later and will liaise with David about whether to go ahead with the meeting...**not sure if your sense of urgency is understood by him** - I can twist Katie's arm but not too much if DM is resistant.

Available on mobile from now until 10pm if you need to speak. "

The board of Directors of Hitchin Town Hall Ltd take great exception to the libelous words "**not sure if your sense of urgency is understood by him**" concerning our legal representative David Morgan. We wish this comment to be withdrawn immediately with an apology.

David has worked tirelessly and has been driving this project forward working many hours on a pro bono arrangement. This has involved working at weekends and late in the evening to make the project happen; this workload and dedication is testament to his fully understanding the 'urgency' of what is required.

David has been pushing for this meeting for several weeks with resistance from Katy White from NHDC.

The only person who is resistant is Katie Whyte who intervenes and says she does not have the resources. Let's be clear she is an employee and far from twisting her arm should be told to get on with it. Any response seems to be negative and her perceived inexperience in heading up the legal team at NHDC is damaging this project.

Note: Following a meeting with Foreman Laws Robinson blamed an assistant who sent the email.

**9. 04-Mar-14 - NHDC, Hitchin Committee**

Provided a positive report to elected members concerning the progress of the Project in spite of receipt of notice of breach of contract being received on 25-Feb-14. Following the report Cllr Judi Billing asked a question and Mr Robinson was obliged to state that he was unable to disclose information. Had the question not been asked the issue would never have come to light with councillors being unaware of the serious nature of the dispute.



10. 08-Aug-13 Questioned the financial position of HTH necessitating the issuance of an amendment. see email to JR 08-Aug-14 10:12

Stated that there was a 'material' change in HTH's funding arrangement for the purchase of 15 Brand Street resulting in information being provided to Full Council that was inaccurate and questioned the financial viability of HTH. Addendum made after strong representation by HTH.

COUNCIL

8th August 2013

"PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

NORTH HERFORDSHIRE MUSEUM & COMMUNITY FACILITY
HITCHIN TOWN HALL LTD: PROPOSAL FOR THE INCLUSION OF 15 BRAND
STREET

CHANGES TO PART 1 REPORT

Para 1.1 page	Delete the word "material". [Explanatory note: The wording of this paragraph unchanged may leave some ambiguity. HTH Ltd do not consider the change to be "material". Council is advised however that in the context of the decision making history, it is considered the changes are significant, particularly as the changes have financial and risk implications. Removal of the word "material" better reflects these views and I am happy to correct any misunderstanding that may have arisen.]
Para 2.1	Remove the words "...and, if so:" – see Part 2 addendum
Para 2.2	Delete recommendation – see Part 2 addendum.
Para 8.9	Delete the date "2013" and replace with the date "2030"
Para 10.2	Delete para 10.2 and replace with the following: 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 £140k long term

	secured loan note following the repayment of the £510k loan from Adventure Capital Fund and the £20k (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.
--	---

David Leal-Bennett

From: David Leal-Bennett [REDACTED]
Sent: 08 August 2013 17:32
To: 'John Robinson'
Cc: 'Mora' [REDACTED] Sharon Nahal
Subject: RE: Material

Dear John

This is very helpful, thank you.

I don't agree with the very last paragraph,

"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."

Compared to the previous structure the "reinvestment" will be £400 per year less for 13 years which I don't think will impact that much. When we eventually have to repay in 2030 or sooner (4 years following ACF loan repayment), the value of the £140k discounted is about £80k! So in today's terms £20 per year - I think we can all live with that.

See you at the briefing later.

Regards

David



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From: John Robinson [mailto:John.Robinson@north-herts.gov.uk]
Sent: 08 August 2013 15:04
To: David Leal-Bennett
Cc: Mora [REDACTED] Sharon Nahal
Subject: RE: Material

Dear David,

Thank you for this.

Please see attached a copy of the changes I will be making to the Part 1 report at Council this evening. As you will see, I have removed the word "material" but provided an explanatory note setting out our different views. This has been necessary, as from the Council's perspective, there have been changes which require its active agreement. I accept, however, that you do not consider your Acquisition Funding to have materially changed.

ony and I will both be speaking about the benefits of the project and the contributions a number of individuals and organisations have made. We will stress the innovative nature of the project and the significant contribution being made by all parties.

You will see that I have copied Morag in on this response to make sure she is aware that the recommendations will no longer be seeking any conditions should Council decide to accept the changes as I see she is speaking at the public presentation section of the meeting. I would be grateful if you could treat this as confidential until it is circulated to Councillors this evening.

Regards

John

From: David Leal-Bennett [REDACTED]
Sent: 08 August 2013 10:12
To: John Robinson
Cc: Cllr Hunter T. (external); David Scholes
Subject: Material

Dear John

I attach a short paper which I had to deliver to the Board last night concerning the 15 Brand Street changes, which HTH consider negligible; I have no problem with this being shared with councillors.

As mentioned yesterday I am formally requesting that the word "material" in your report be changed to "immaterial" or something similar.

As I said when we spoke yesterday, using Local Authority speak in a Public document is not giving the correct message and NHDC has a duty to report factually. I trust that after reading this note you will agree and make the change.

The deal we have with the Donor and Benefactor is unbelievable and we should all be grateful, not find fault.

I have also mentioned to Tony, in the spirit of partnership, that it would be nice to offer some praise to HTH for extending the deadline date set by ACF from 16-Aug to 5-Sep. As you know HTH only heard about this on 15th July, at the Project Board meeting, and since then have worked tirelessly to convince ACF that NHDC could meet the latter date, the confirmatory letter from David Scholes being a requirement of ACF to extend. Since this is not mentioned in the report some acknowledgement would be welcome.

Regards

David



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11. TUPE



HITCHIN TOWN HALL LTD

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J Robinson Esq
Strategic Director Customer Services
North Hertfordshire District Council
Gernon Road
Letchworth Garden City
Hertfordshire SG6 3HN

March 1st, 2012

Dear Mr Robinson

HITCHIN TOWN HALL - DEVELOPMENT AGREEMENT, TUPE

We write to you following a hastily convened board meeting earlier this week.

After much consideration, the board voted unanimously that it is NOT prepared to sign a contract with wording obliging HTH to take on NHDC staff. The board of directors,

1. were expecting a short indemnity clause covering the position should TUPE become an issue;
2. did not expect to receive over 40 clauses stating that HTH will be taking on the existing staff and would have to deal with any redundancies;
3. considered this approach to be well "over the top", even having regard to Marie Searle's covering email; and
4. have been advised that if this wording is given to FBE's lawyers, it is likely to cause considerable concern to our funders.

We believe it is incumbent on NHDC to deliver a simple indemnity clause to cover HTH's costs, which would occur in the unlikely event that a member of your staff insist on a TUPE transfer and such transfer was granted following a judicial ruling.

We have been waiting for this wording from NHDC for many months, had this been presented sooner we could have dealt with these issues much earlier; now we are against a very real time constraint with Futurebuilders England Ltd and delay of any kind puts our funding in serious jeopardy.

As you are aware HTH have taken high level legal advice and we are informed, in view of the 18 month delay, that TUPE does not apply and that any staff issues are the full responsibility of NHDC, even with 'flexible contracts'.

We will now take this matter further with our legal counsel incurring extra costs and delay.



HITCHIN TOWN HALL LTD

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To expedite matters we require certain information concerning your TUPE stance. In this connection please accept this letter as our formal request to NHDC for the additional information we will need to pass to legal counsel:

1. A copy of your briefing note to your external legal counsel (we have your email of 14-Nov-11).
2. A copy of the advice received from your legal counsel.
3. Names of the staff your legal counsel consider could be TUPE'd to HTH Ltd.
4. Copies of the original signed contracts of those nominated in item 3.
5. Details of the current remuneration package of those nominated in item 3.

This information has already been requested through the legal channels by David Morgan of Forman Laws and will be treated in the strictest of confidence.

We look forward to your receiving this documentation at your earliest convenience.

Yours sincerely

B Smith
Chairman



12. Copyright

HITCHIN TOWN HALL LTD - Confidential

File Note:

DLB meeting with John Robinson, NHDC - 14 October 2013

Events

JR mentioned that we need to shortly commence the Management liaison meetings regarding bookings etc. He wishes to know what dates we are considering for usage of the museum for our fundraising and business.

JR stated that he now considers the museum as an "Income Generator" and will be renting out the gallery for various events. I asked if this would be with someone like Stevenage Leisure and he stated that it would be coordinated within NHDC. I also expressed some concern regarding overlap to which he responded that is why we need to liaise.

I find this new approach of concern since it cuts across our Business Plan and has never been mentioned before and furthermore is not reflected in our Financial model. I am not sure if it is NHDC policy or just a JR initiative, I suspect the latter as the museum service is loss making.

Action Point for HTH, discuss at Board and consider a response.

Copyright

The use of our artist Impression (Pic1 looking up Brand Street) was discussed. JR mentioned plagiarism but focussed on the other picture (Pic2 looking down Brand Street).

He clearly realises that NHDC have used Pic1 without requesting permission and has now withdrawn its use. I mentioned that we just needed to formalise any usage and that provided we received acknowledgement that we were unlikely to object. He seemed somewhat irritated and mentioned our use of Buttress Fuller's pictures in the planning application; I advised him that Brent had sought and obtained their permission.

I corrected his view that even if pictures were in the Public Domain that they were still subject to copyright, which he now accepts having been briefed, I assume, by his legal team.

I stated that this was not a big issue but we would like usage formalised since we would be using our Pic1 for merchandising and our formal letter would state this. It was a give and take partnership working.

He then stated that he would be commissioning his own picture since Pic1 did not represent the design which had changed, he cited the last design meeting (one has to ask why has he used the Pic1 and printed off numerous leaflets?).

Action Point for HTH, send letter outlining our position.

HITCHIN TOWN HALL LTD - Confidential

Marketing

The conversation turned to the hoarding and he would like to know content and what size we would like. I showed him an idea of what we had in mind and that it had not been finalised but was primarily for fundraising; I agreed that Morag would get back to him in due course. However when I mentioned we would like to use Pic1 he was not happy as this was "not correct". I did say that this was used in the planning application but this cut no ice with him. Let us see what happens.

Action Point for HTH, discuss and advise hoarding requirements in due course.

Community

He was concerned that we had not responded to Brian Foreman's letters in the press. I stated that I had tackled BF direct and received an apology and that the Board did not think it appropriate to enter into a public spat.

He then mentioned Chris Parker's letter and his approach to English Heritage. He has had a conversation with Chris and is not at all happy. I stated that I had not seen the letter and could not comment but that Chris was a lone individual rather like BF and this was something with which we all had to manage.

I sensed he felt that our reticence to comment was our tacit agreement.

Action Point for HTH, arrange a meeting with Community Groups.

Press releases

JR would like to revert to the original arrangement of joint releases. It would appear that NHDC going it alone and our picture with John Ray did not go down that well. I did state that I had mentioned it to Tony Hunter (Portfolio Holder) but was told quite emphatically that I should deal direct with JR. I did subsequently speak with Tony about their photo and he has advised me that he will not be caught out again as he had expected HTH to be included, I think this has rather rebounded on JR but we can go along with his request which is;

- Joint - we provide one quote each
- Museum only - NHDC provide
- HTH only - HTH provide.

Action Point for HTH, to be mindful of JR sensitivity to control press releases and work in partnership.

dib

14-Oct-13

David Leal-Bennett

From: David Leal-Bennett [REDACTED]
Sent: 07 October 2013 15:27
To: 'John Robinson'
Cc: 'David Scholes'; 'David Morgan'
Subject: Use of Pictures
Attachments: HTH entrance 02.jpg; HTH entrance 01.jpg

Dear John

I mentioned this to David briefly last week, and HTH will shortly be writing in an official capacity, but we are concerned that NHDC are using images without our permission. This might seem a little trivial but it is very important to HTH, our letter will explain in more detail.

In the meantime can you please:

- Advise me of what publications/presentations NHDC have used the picture(s)
- How many leaflets have been produced and to whom they have been specifically distributed or displayed.
- Let me know of what plans you might have concerning any future picture(s) usage.

I am sure that we can come to some arrangement for the future but in the meantime I would request that NHDC please refrain from using the pictures.

The specific pictures in question are attached, you will note that these versions are reduced in quality and have a copyright notice.

Thank you.

Kind regards

David



This email is intended solely for the addressee, is strictly confidential and may be legally privileged. If you are not the addressee, or the authorized agent thereof, please do not read, print, store, disseminate, distribute, copy or otherwise act in reliance on it or any attachments. If you have received this email in error, please notify us immediately and then permanently delete the message and any attachments from your computer systems. Please note that the sender does not accept any responsibility for viruses and it is your responsibility to scan the email and attachments (if any).



13. Breach



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Strategic Director Customer Services
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District Council Offices
Gernon Road
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Hertfordshire SG6 3JF

16th February 2013

Dear John,

Proposal for the inclusion of 15 Brand Street in to the North Hertfordshire Museum & Hitchin Town Hall Project

We refer to our letter to you dated 28th January 2013 your reply of 30 January 2013 to our meeting of 6 February and your subsequent correspondence of 8th February 2013.

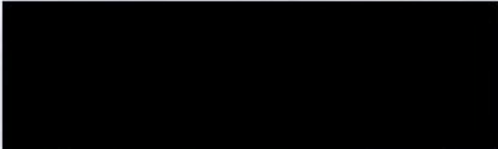
We are extremely disappointed that, within 4 months of signing the Development Agreement, we are, not for the first time seriously considering our position in relation to this joint project. The frustration felt by all board members is immense and unfortunately recent events have reinforced our view that we severely doubt the will within NHDC to comply with the requirements of the Development Agreement in relation to No 15 in a timely manner. We acknowledge that work surrounding 15 is now progressing but we are very concerned that this has occurred too late and, is just posturing for the file.

There is still a very real refusal (despite comments to the contrary from Museum staff and the architect) to admit that there are very real advantages in including 15, namely:

- The far wider and more impressive entrance and foyer area would give both the museum and the café/shop a vastly improved frontage and circulation area, and higher and far more attractive visibility.
- The possibility of moving museum storage from the extremely inconvenient backstage position to one adjacent to the museum itself. The argument that the only way of achieving the necessary sound attenuation is by filling a large space behind the stage with museum artefacts is nonsense even to a lay person. The retention of the full-sized stage improves the viability of the hall from the community perspective, as it allows for live musical and dramatic events which otherwise would not be possible under the original plans.
- The resulting relocation of the local studies area to a far more attractive space on the first floor.

In order to progress matters we have responded to your letter of 8th February 2013 and this response is shown at Appendix 'A'. Further appendices deal with our views on other aspects of the project. These are included to give context to our frustration.

Yours sincerely

A large black rectangular box redacting the signature of Brent Smith.

Brent Smith
Chairman & Trustee

Appendix 'A' - Response to NHDC letter dated 8th February 2013

For clarification in this appendix 'A' NHDC text is Black and HTH text is Blue

I am writing, as promised, following our meeting 6th February 2013 to seek clarification and to confirm the basis on which your proposal will now be taken forward to establish whether it is possible to include 15 Brand Street in to the development.

You are aware that we have arranged a Project Board on Monday 11th February 2013 to consider our approach to fulfilling the obligations under the existing Development Agreement.

HTH are very disappointed that despite the email from Morag Norgan (Appendix 'B') that you chose to go ahead with the meeting. As we suspected this has, in our opinion, resulted in poor and challengeable decisions being taken. The intent was to challenge the contents of the Exception Report No 1 however this has now been superseded by the Project Executive decisions taken following the PB and therefore our opinion on those decisions are contained in Appendix 'C'.

The areas requiring clarification or confirmation of variation from your original proposals are:

Hitchin Area Committee is described as 'an existing lender'. I am taking this as a potential lender based on the prospective application for financial assistance highlighted to Hitchin Area Committee via Hitchin Initiative on your behalf and wanted to confirm that our view is this is outside the scope of Hitchin Area Committee's terms of reference and should be included as a visible cost of the proposed inclusion of 15 Brand Street when reporting this matter to Council.

David Leal-Bennett has dealt with this point in his email of (Appendix 'D') . HTH do not class HAC as 'an existing' or any other lender, apologies for this error.

We note your comments in relation to the Terms of Reference of HAC, this is a matter for NHDC not HTH Ltd. A full report outlining the history, background and reasons for our request will be sent to members of the area committee via the usual channels and the request resubmitted to their March meeting as requested at their January meeting.

The financial structure described in your original proposal as a 'grant and capital styled long term loan notes' in the proportion 25% and 75% (possibly with a nominal coupon) to only be repaid once liabilities to ACF and NHDC have been discharged requires some further explanation following our meeting. In the meeting you indicated that such notes might only be repayable should Hitchin Town Hall Ltd decide to do so i.e the lenders would have no right to repayment – can you confirm this please?

HTH will formally confirm in writing that no liabilities to other lenders will be due until after the liabilities to ACF and NHDC (other than regular management charges) have been discharged. In addition at all times HTH will comply with its Charitable Objectives and will keep ACF advised. Further detail is not considered necessary or desirable given the commercially sensitive nature of the transactions.

You also indicated that it would be necessary to create a new category of shareholder (The Objects already allow for different types of Member, see Clause 11 (1) "The directors may establish classes of membership with different rights and obligations and shall record the rights and obligations in the register of members.") or similar to accommodate those providing this funding and that you understood NHDC's request that, in order to maintain engagement with stakeholders/beneficiaries, this should be proceeded by an advertisement to invite beneficiaries to join Hitchin Town Hall Ltd to ensure

transparency and accountability in respect of the proposed issue of long term loan notes prior to this happening. At the meeting you indicated that this should not be problematic and I would be grateful to receive your confirmation of this.

HTH confirms that in compliance with its own Objects and the requirements of the Charity Commissioners it will be advertising for members /beneficiaries prior to the first AGM in September 2013. The exact timing and wording of this advertisement is dependent on whether 15 is included in the scheme, like all the issues surrounding this project it does not stand alone but dependant on the linked parts.

In respect of the number of covers for the café you confirmed at the meeting that whilst an increase would be desirable it was not a requirement. Our view is that the café is ancillary to the main function of the building although we do accept that the income is critical for your financial model. However, the financial model has been approved in its present form so NHDC do not consider immediate change is required here. It is acknowledged, however, that variations at some point in the future may be possible either through the formal change process or utilising existing operational flexibilities built in to the Development Agreement. Again, could you confirm you are content with this position?

We genuinely wish we could be content with this position however our experience is such that we will require the variation to be negotiated swiftly through the formal Design Board process and included within the new DA. We are confident that if it is the will of the parties then this aspect can be resolved within one short meeting which we would be happy to attend next week.

In terms of revisions to the Development Agreement, you have indicated that you considered this would be straight forward and David Morgan confirmed this to be the case when we met. Could you please confirm which of the approaches you outlined in your formal proposal you suggest is taken and provide a copy of the agreed option agreement for 15 Brand Street? It will be important that the basis of the proposal is clearly agreed at the outset as negotiations on the Development Agreement in its first iteration were protracted and the agreed timescales were not adhered to. Could you also therefore confirm that there are no further points of principal or other significant matters that Hitchin Town Hall Ltd would wish to incorporate in to the Development Agreement beyond that which you have set out in your written proposal and at our meeting last week?

David Morgan wrote to Ward Hadaway in mid-January enquiring as to their requirements if No. 15 was to be incorporated in the scheme. To date he has not received a response, most likely because they have, understandably, not yet been formally instructed.

Regarding the Option Agreement in respect of 14 and 15, this is a first draft only but should be available early next week. Discussions have taken place with the owner's solicitor but the agreement is not settled.

David is also in touch with Margaret Martinus in order that they may agree what is required in respect of either the existing scheme (if there is to be a time extension) or the enlarged scheme.

He confirms his estimate that if the principals are in agreement, then the documentation can be turned round within 20 working days.

Your proposal in respect of the procurement of a construction contractor, and possible re-procurement of the lead architect, are not, in our view, achievable within the legislative and control framework we operate under. We are taking further specific advice on this point and I would like to simply note at this point that this will be a complex area and will almost certainly take beyond the three months extension now provisionally offered by ACF.

HTH have not suggested that you retender the main architect appointment – our advice is that it is entirely possible to retain BFAW to carry out the work required to bring in 15

even if they are on the fee profile limit. Please confirm that your specific advice has confirmed this point or evidence otherwise.

In this regard we are concerned that you appear to have deliberately breached both the spirit and the letter of the Development Agreement immediately upon signing it. Your solicitor indicated that your architects will not be able to progress work on the incorporation of 15 without their engagement being re-tendered, but you decided that your architects could not be engaged until the DA was signed. If your solicitor is correct, either you engaged the architects knowing that this would lead to a breach of the DA or you signed the DA never intending to investigate the inclusion of 15 Brand Street because you then engaged your architects on a contract which would not allow it.

Turning to the procurement of the main construction contractor – HTH appreciate this will not be possible within the 3 month extension whilst NHDC insist on linear working. It would have been entirely possible had the cost comparison report work been instructed in October 2012 immediately after the signing of the DA and in parallel with the planning application to bring in 15. However it is still possible to meet the new deadline so long as the project is parallel tendered in March 2013. We do not accept that it is outside the legislative and control framework you operate under and our external, professional advice supports this view. We await the evidence of your own specific advice.

I note the ACF offer of extension refers to conditions and we will urgently need to know if these are applicable to NHDC and indeed what they are – can you provide the detail? We are in daily discussions with ACF regarding the conditionality of the extension. They are expecting an HTH report that will detail the timings for both the current and enhanced scheme. HTH have already run the numbers and confirm that the DSCR ratios, within the redrafted financial model that brings in 15, can be signed off with ACF shortly since there is little change and that small change is positive. ACF are awaiting our report confirming the detail of the renegotiations between HTH and NHDC regarding the inclusion of 15 Brand Street.

Cost implications:

Please confirm the anticipated purchase price 15 Brand Street and separately detail the costs of any ancillary party wall etc expenditure

The formal valuation of 15 Brand Street is to follow. Quotes for Party Wall Act professional costs can be obtained by HTH Ltd following confirmation that NHDC are free to use any local, qualified and experienced Party Wall Surveyor. HTH Ltd would not wish to waste time obtaining a quote that is then perceived to be 'unsuitable'.

Please also confirm that Hitchin Town Hall Ltd will reimburse the professional fees for BFAW which are estimated to be between £27k-£30k and when such reimbursement is proposed.

HTH Ltd is unable to provide this confirmation without sight of the full quotation. It is considered exceptionally high particularly given comments made by Neal Charlton in the presence of HTH Directors. We do not perceive that it offers value for money and would strongly suggest that this is renegotiated particularly in the light of the disastrous expressions of interest notice from December 2012.

Please also confirm whether Hitchin Town Hall Ltd will pay the Gymnasium & Workmans Hall Trust valuation fees of between £500-£1,000

In the spirit of partnership HTH Ltd are willing to have the formal valuation written in the joint names of HTH Ltd and the Trust in order that both parties are able to rely on the contents.

I understand that Hitchin Town Hall Ltd will not be willing to reimburse NHDC any further costs including Legal, specialist advice etc, could you confirm?
Correct this is a partnership.

Please indicate whether Hitchin Town Hall Ltd would be prepared to underwrite any additional costs that may be incurred in construction beyond those already identified and accepted by NHDC.

You will appreciate that HTH Ltd are unable to 'underwrite' any additional construction costs and is unable at this stage to provide any commitment to do so. On the understanding that the project is parallel tendered the board is willing to consider ways in which to 'bridge' any increase in construction costs. Options include an application for S.106 monies to support the enhancement of a Hitchin community facility as well as approaching ACF.

Finally, please confirm whether Hitchin Town Hall Ltd would be similarly willing to underwrite any forecast savings not achieved by NHDC as a result of delays in the project beyond November 2014.

Under the HTH Ltd charitable objectives this would not be possible and in any event the board do not agree that this delay is required, please refer to our comments above.

Planning fees – NHDC would anticipate that such costs would be borne by Hitchin Town Hall Ltd. Can you please confirm that this is the case.
Please confirm the planning fees to which you are referring?

Please note that it is my intention to engage BFAW to undertake a design and cost review over the next few weeks to provide more certainty about the anticipated cost of incorporating 15 Brand Street in to the scheme. This reflects the Council's commitment to the exploration of a potential expanded future scheme that may include 15 Brand street. We anticipate that this will cost between £5k-£10k and will bear this cost as a necessary expense in assessing and reporting on your proposal.

Your comments are noted. HTH Ltd reiterate that given the protracted time it has taken NHDC to meet the requirements of the DA in respect of investigating the inclusion of 15 we strongly suggest that the cost comparison exercise is fruitless. It will delay the process, provide insufficient clarity and not offer value for money. The need for the cost comparison exercise to compare the two original schemes was understood, this time it is not. We are at a complete loss as to your seeming unwillingness to change the method by which you compare the schemes.

Now that time is of the essence, please advise why NHDC cannot parallel tender, or offer a variation, for the two schemes (or similar) to obtain the required cost certainty? Surely it is better for Full Council to take a decision on which scheme to go with once the costs facts are in front of them?

I will look forward to receiving your response as soon as possible. If you have any queries please do let me know and I will do my best to clarify.

Apologies for the slight delay in responding, our original letter has had to be superseded given the decisions taken at the PB meeting and we have had to spend time obtaining further specialist advice.

We look forward to receiving future dates (at least until end June) for both PB and design team meetings. We would rather they were cancelled if not required than be forced into short notice meetings with insufficient time to properly prepare.

Appendix 'B' - email from Morag Norgan sent 11-02-13 08:22 concerning Project Board meeting.

Good Morning John,

I write on behalf of the HTH Directors to formally request that today's Project Board meeting is cancelled. We believe that insufficient notice has been given and that NHDC papers have been rushed to accommodate this unusually short and unnecessary timeframe. HTH are concerned that both the agenda and the Exception Report are incomplete with the latter being poorly worded, clearly rushed and in our opinion inaccurate. Given this and the events of the last week it is considered highly inappropriate to rush through this important meeting.

The whole HTH team has spent much of the weekend dealing with your letter of 8th Feb and Steve's Exception Report No 1. The board will respond formally as soon as possible and certainly by close of business tomorrow. It is this detailed response that the HTH board will wish to be circulated to all PB members at least 3 days prior to a PB meeting (unless NHDC or Prince rules require longer – please advise)

We are very happy for you to forward this email to PB members to give them context for the cancellation.

Regards

Morag

Appendix 'C' - The HTH opinion of the Project Executive decisions taken following the Project Board - NHDC Decisions in Black, HTH Ltd comments in Blue

Dear All,

Please find a copy of my decisions following Project Board yesterday.

1 Exception Report

- Proceed with 3 tenders until/unless ACF confirm 3 month extension (note 3/4/5 weeks only needed) - to meet NHDC Development Agreement obligations and not to jeopardise ACF funding.

We have received advice from a suitably qualified surveyor to the effect that 30 days should have been allowed for contractors to respond to the notice asking for expressions of interest, or 10 days if a PIN notice had been issued. Weekends and Public Holidays would need to be added to the number of days. Under both UK and EU public procurement rules there must be a minimum of 5 bidders. Bidders must be given a minimum of 40 days to prepare their tender, and the Council must state in the Invitation to Tender the criteria for selection of the successful contractor. We would appreciate receiving copies of written evidence that these requirements have been met.

You state in your letter of 1 February concerning the request to ACF for a time extension that the "poor response [to the tender advert] means that there are significant risks to the project particularly in whether the tenders returned could demonstrate best value...". In the light of that we fail to understand why you are determined to continue with this flawed process.

- Note Hitchin Town Hall Ltd will provide ACF with information as a matter of urgency to comply with conditions and if agreed;
- Re-start procurement for construction contractors to improve shortlist - to ensure VFM is achieved

2. 15 Brand Street

- Note BFAW have been commissioned to re-draw, cost 15 Brand Street to feasibility stage - to obtain firm costing/design data to present to Council

Why was this not done in Oct/Nov 2012? No longer required if parallel tendering or similar is considered as an option. Why was the decision on this not deferred a few days until your specific advice was received in relation to parallel tendering?

- Await Hitchin Town Hall Ltd's response to letter requesting further details - to allow cost/risk/use implications to be reported to Council for decision

The inability to provide cost certainty is directly related to the lack of will to parallel tender.

- Agree provisional timescale to report to Council (prior to completion of either tender referred in 1 above) by 1st week April 2013.

Current timetable provides insufficient time to then tender 15 within ACF 3 month extension. In the event that ACF pull the funding HTH Ltd would look to agree a similar loan/grant with NHDC to ensure that the project did not fail.

[Note: all decisions subject to NHDC Legal, Financial and Procurement etc advice]

Regards

John

Appendix D - Hitchin Area Committee confusion dlb email sent 12-Feb-13
17:29

John

On point 3, I am not sure how this slipped in, don't know what I was thinking. I can confirm that Hitchin Area Committee are not a lender nor intended lender.

For continuity, I believe it would be best if Lynda could attend the meeting.

I worked on the Financial Model until the small hours and whilst I still have more to do, can confirm that the figures ACF required are slightly better i.e. the DSCRs are marginally higher. I have still to model the increased cafe numbers per the museum footfall but these will actually improve them.

Regards

David

Appendix E - Holding email sent by dlb on 08-Feb-13 11:13

Dear John

You need to be aware that HTH will not accept a fait accompli at the Project Board meeting on Monday, we expect a positive progress plan to ensure that 15 is incorporated as an option and is parallel tendered.

All of the directors (and David Morgan) are extremely annoyed at your stance at the meeting where you seemed to be putting hurdle after hurdle to stop the progress of a tender for the 15 option. This does NOT feel like a partnership, which it should be, and you did not even have the courtesy to tell us that you had sent out the tender documents earlier in the week.

The tender process you have commenced is flawed and by your own admission will not deliver Value for Money, something that concerns ACF. In addition, and if it proceeds, it is highly likely to be challenged. I have taken advice and received the following:

"In our view good grounds for challenge to any contract award here as 3 days (or even 6) in a holiday period is unreasonable amount of time to assess tender opportunity and express interest. Most companies would not be able to do it."

Apart from the above, it is morally wrong for NHDC, especially in the current climate, to send out tenders when in all likelihood there will need to be another "expressions of interest" round. The three companies in question, and I would appreciate knowing who they are, will be putting precious resources into their bid which they can ill afford. HTH feel that, by implication, you are associating us with this process and this could cause us reputational risk. In the circumstances we request that you advise the companies in question that the process is on temporary hold.

From the reaction of Lynda she did not appear to know many of the points we discussed, however she now has her bit of paper from ACF and hopeful is better informed and understand how serious the directors are with regard to the inclusion of 15.

HTH have gone out of their way to deliver 15 and you are fully aware of how much work that has taken place, yet you do not appear to have taken it at all seriously, there was not a single mention of it in the list that attached to your time extension request. I was particularly irritated when you had the audacity to say to me (after several letter exchanges and a meeting) that you had not had a formal letter from HTH concerning 15 and as such could not progress; this bureaucratic linear approach is totally unacceptable. I believe that your inaction and process driven approach has caused NHDC to breach the Development Agreement.

As I said at the meeting, if I had acted in this manner and sent back your extension of time request with comments and changes and challenges, and then insisted on a formal letter before I put the request to ACF, we would still be waiting! HTH DO NOT work like this and we dealt with the request immediately; within 24 hours of our meeting ending on Wednesday you had ACF confirmation. I thought we had a basis of working together which I now seriously doubt.



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Strategic Director Customer Services
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25th February 2014

Dear John,

**North Hertfordshire Museum & Hitchin Town Hall Project
Partial Demolition of Mountford Hall Stage and Breach of Development Agreement**

We refer to your email of yesterday timed at 15:34 addressed to the directors, Morag Norgan, David Parsley and our legal representative David Morgan.

Thank you for your reply detailing the BFAW response to the matter. We find their comments largely irrelevant, planning matters are not the subject of our serious concerns. The relevant matters here are the Listed Building Consent and your obligations to us under the Development Agreement.

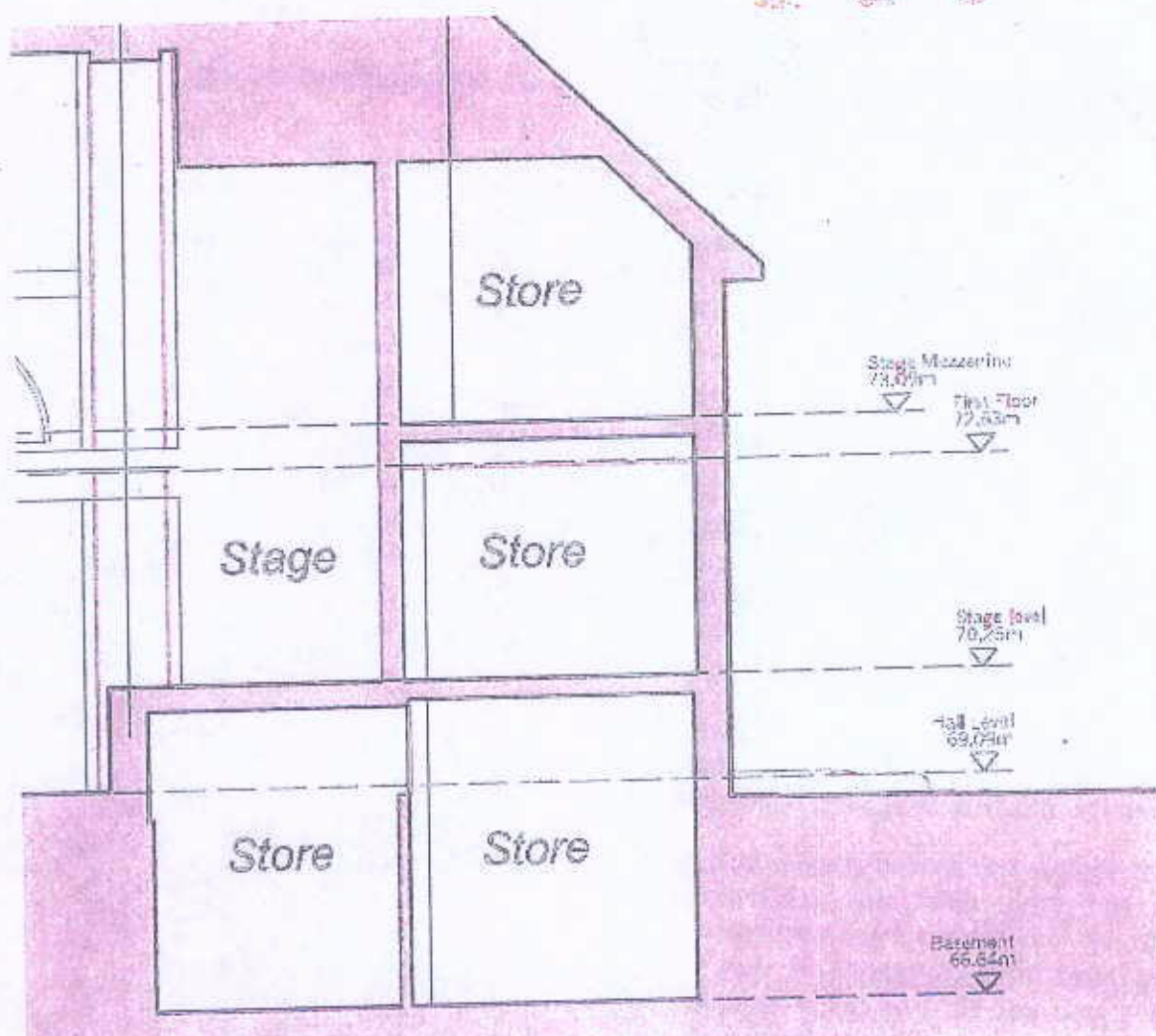
As you are doubtless aware even minor modifications are not allowed to Listed Building Consents, any variations have to be the subject of additional applications. No such applications in respect of the partial demolition works to the main stage have been made nor have HTH Ltd been advised of these proposed variations as required by the terms of the Development Agreement.

We would draw your attention to Page 12 of 93 of BFAW Design & Access Statement which forms part of the Approved Documents under the DA. The relevant extract is set out below:

Main Hall

There are two subtle changes to the main hall, the levelling of the balcony, and the reduction in stage size. The removal of the fixed seating to the balcony – considered unsafe and currently not accessible to the public, facilitates a new floor to be inserted to the gallery at the level of the doors to the rear. This allows the formation of a level gallery to the balcony. To protect the public from falling off this level gallery, a modern glass balustrade is proposed to sit above the height of the existing balcony front. This allows the balcony to be brought back into viable use, without enclosing the space as a separate room.

The second intervention is the addition of an acoustic screen to the stage – reducing its capacity and insulating the stage from the dwellings to the rear of the complex. This stud wall would be acoustically isolated, and ultimately reversible to recreate the full stage capacity.



Part drg no 7037(06)002T

There is no reference to the division wall being of concrete block construction. The key words are

"This STUD wall (our caps) would be acoustically isolated, and ultimately reversible to recreate the full stage capacity".

This reversibility is of crucial importance to HTH Ltd and to the community groups we represent.

We believe the works to cut through the stage to erect a blockwork wall would require Listed Building Consent and therefore suggest that you are in breach of the Listed Building Consent.

There is also no mention of the upper part of the stage being used for plant or the alterations which are shown on the tender drawings for ductwork. In this respect we see that there is a proposal to take ducts through the front of the stage, this will restrict the functionality of the hall and potentially user comfort.

In addition it will have severe limitations as a functioning ventilation system when the stage is extended. We believe this ductwork and the alterations necessary to accommodate it would also require Listed Building Consent and would again suggest that you are in breach of the Listed Building Consent.

The HTH Ltd board has taken legal advice this morning and are advised that NHDC are in legal breach of the Development Agreement.

Please take this letter as formal notification of a breach.

Please also take this letter as the formal request to immediately cease all works to the stage area of the Mountford Hall until there has been an urgent meeting of the parties including a full design team meeting at the earliest convenience - we propose Friday this week.

We consider this to be an extremely serious matter and not one we would wish to deal with by conference call. To summarise, we see the issues as being:

1. Failure to make the sub-division of the stage reversible. You have been aware throughout the protracted negotiations between us that we were very reluctant to accept the reduction of the stage and only did so on the clear understanding that the work would be reversible by us in due course. The BFAW response indicates that the wall has been constructed using concrete blocks for reason of economy.
2. The carrying out of works without Listed Building Consent or contrary to the consent given. The stage has actually been cut through. This is an irreversible injury to the Listed Building.
3. Functionality. The divided stage would be backed by a concrete block wall with hard plaster finish, this must worsen the acoustics of the building. We fail to see how the proposed ventilation system will work when the stage is being used for performance. A visit to the site will illustrate how little benefit you get for this costly intervention to the building even if it is ultimately carried out in accordance with the consent.

4. Failure to meet the requirements of the Development Agreement in respect of design consultation and notification of amendments.

We look forward to your immediate confirmation of receipt of this notice and to resolving this most unfortunate position as soon as is practically possible.

Yours sincerely

Brent Smith
Chairman & Trustee



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Hertfordshire SG6 3JF

18th March 2014

Dear John,

North Hertfordshire Museum & Hitchin Town Hall Project Partial Demolition of Mountford Hall Stage and Breach of Development Agreement

We reference our letter dated 25th February 2014 and our meetings of 28th February 2014 (Special meeting following formal notice of breach of contract) and the Project Board meeting of 10th March 2014. We also reference your email dated 13 March 2014 enclosing a proposed side letter to the Development Agreement signed between ourselves on 9th September 2013.

Having considered your proposal of 13 March 2014, and taken legal advice, we would inform you that we are not prepared to agree to amend the HTH requirements, in order that NHDC can 'box tick' retrospectively, for your clear breach of failure to advise of the change of specification and provide the related detailed drawings.

We would draw your attention to Page 12 of 93 of BFAW Design & Access Statement which forms part of the Approved Documents under the DA. The relevant extract is set out in Appendix A below.

The provision of reversibility back to the original stage has always been, and remains a key objective of HTH. We have continually stressed the importance of this matter throughout the process, and had hoped that we had removed the problem by bringing in 15 Brand Street; we regards the way in which you have acted in this matter to be a betrayal of trust and not within the spirit of partnership working.



If we are to consider the acceptance of the wall as built, we need to reach agreement on the following;

- 1) The specification for the acoustic treatment to the block wall, stage side.
- 2) Moving of the duct riser to a location to the side of the stage.
- 3) The specification of the ventilation installation in the stage area to ensure there is no vibration, noise output and no external break out paths from exhaust/intake points all to satisfy this critical location for performance.
- 4) Review alternatives to front stage air supply.
- 5) Suitable velocities for fresh air supply.
- 6) Remedy of inadequate costs provided for Hall decoration and repair.
- 7) Full review of the balcony proposals.
- 8) Review of Electrical services and amendment where deficient e.g. Data to Hall
- 9) Provision of the initial acoustic break out survey and proof of the built in improvement to satisfy the HTH requirement.
- 10) Adoption of a full liaison process as required by Clause 16 of the Development Agreement including;
 - a. Establishment of the Design Project Group.
 - b. Set regular meeting dates.
 - c. Issue of Contractors Project Meeting minutes.
 - d. Issue of Contract Programme.
 - e. Variations.
 - f. Contractors' design information.
 - g. Drawing register updated and revised drawings issued.
 - h. Agreed weekly site access for HTH.
- 11) Acceptance that if HTH raise the necessary money to fund the provision of acoustic panels to follow the curved ceiling NHDC will accept this work as a variation to the Boras contract.
- 12) NHDC to bear any legal costs in any documentation variations.

We look forward to your prompt response in order that we can resolve these issues in a timely fashion.

Yours sincerely

Brent Smith
Chairman & Trustee



Appendix A

Approved Documents Page 12 of 93 of BFAW Design & Access Statement

Main Hall

There are two subtle changes to the main hall, the levelling of the balcony, and the reduction in stage size. The removal of the fixed seating to the balcony – considered unsafe and currently not accessible to the public, facilitates a new floor to be inserted to the gallery at the level of the doors to the rear. This allows the formation of a level gallery to the balcony. To protect the public from falling off this level gallery, a modern glass balustrade is proposed to sit above the height of the existing balcony front. This allows the balcony to be brought back into viable use, without enclosing the space as a separate room.

The second intervention is the addition of an acoustic screen to the stage – reducing its capacity and insulating the stage from the dwellings to the rear of the complex. This stud wall would be acoustically isolated, and ultimately reversible to recreate the full stage capacity.

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25th March 2014

Dear David,

North Hertfordshire Museum & Hitchin Town Hall Project Partial Demolition of Mountford Hall Stage and Breach of Development Agreement WITHOUT PREJUDICE

We write with reference to the latest issue with this project whereby Hitchin Town Hall Ltd ("HTH") was compelled to issue a formal notice of breach of contract on 25th February 2014.

The decision to issue the notice was not done lightly, and by serving notice HTH was following the contractual dispute process; this should have halted work temporarily pending an agreed resolution, quite normal in construction contracts. The construction of a wall across the stage in concrete blocks was not time critical and was contrary to the Design & Access statement - see Appendix 'A'. In spite of meeting with elected members, legal representatives and your team on 28th February 2014, Mr Robinson allowed the work to proceed.

This is but the latest problem in a litany of issues we have had with NHDC and in particular with the approach adopted by Mr Robinson; some of which have been raised directly with you. Some further examples of Mr Robinson's treatment of HTH are detailed at Appendix 'B'.

This project requires a collaborative approach to make both the Museum and the Town Hall viable. Over the past four years Mr Robinson has frequently shown his unwillingness to collaborate with the HTH team; a team that extends well beyond the four trustees/directors and comprises professionals and experts who have many years of relevant experience. The HTH team has spent many hours, weeks, months and years endeavouring to obtain the best for the Town Hall and associated Museum, for the benefit of the residents of North Hertfordshire. This should have been a rewarding and collaborative experience, unfortunately this has not been the case.

HTH signed the Development Agreement ('DA') in good faith based on the only detail available at the time: the lease plans. We have been requesting more detailed drawings ever since, including a copy of the tender document, with no success. The drawings were only made available to us in November 2013, despite being dated November 2012, and were so numerous and complex that it has taken significant time to consider them. In the meantime the work has proceeded without the consultation that was built into the DA, resulting in the very real danger that the HTH business model has already been seriously compromised.



We believe we have done all we can to enhance the Museum side of the project by bringing 15 Brand Street into the frame, but there has been no reciprocity on the part of NHDC. It is our opinion that we are being deliberately kept in the dark over the nature of the building we will eventually get to operate.

You will be aware that we have consistently had problems achieving resolution to issues that have arisen relating to the project with Mr Robinson. In our opinion, Mr Robinson has without our consent or input, taken on the role of sole adjudicator on all project matters. We had not anticipated that this would be the case and had assumed that we would be working in partnership with a team of NHDC experts, who would apply a rational and collaborative approach to the running of the project to protect and promote the interests of the residents of North Hertfordshire. These hopes have consistently been dashed - with the result that we now feel that there is no desire for cooperation on the part of NHDC as illustrated by the activities set out in our attachment. This is a most regrettable state of affairs, but in order for the project to achieve its aims we have come to the point where we are of the collective opinion that the conduct of Mr Robinson has been such, that we do not believe we can continue to work with him on the current basis.

We would ask that you consider appointing a replacement Project Executive, who is committed to achieve a viable Town Hall as well as a viable Museum. If this cannot be done we will have no alternative than to reconsider our position as trustees and directors.

It is extremely sad that we have reached this decision, which is supported by all of the Community Groups whom we represent.

We hope we can come to a workable arrangement and look forward working with you in the spirit of partnership cooperation.

Yours sincerely

Brent Smith
Chairman & Trustee

Rosemary Read
Director & Trustee

Stephen Pike
Director & Trustee

David Leal-Bennett
Director & Trustee



Appendix A

Approved Documents

Page 12 of 93 of BFAW Design & Access Statement

Main Hall

There are two subtle changes to the main hall, the levelling of the balcony, and the reduction in stage size. The removal of the fixed seating to the balcony – considered unsafe and currently not accessible to the public, facilitates a new floor to be inserted to the gallery at the level of the doors to the rear. This allows the formation of a level gallery to the balcony. To protect the public from falling off this level gallery, a modern glass balustrade is proposed to sit above the height of the existing balcony front. This allows the balcony to be brought back into viable use, without enclosing the space as a separate room.

The second intervention is the addition of an acoustic screen to the stage – reducing its capacity and insulating the stage from the dwellings to the rear of the complex. This stud wall would be acoustically isolated, and ultimately reversible to recreate the full stage capacity.

Confidential



Appendix B

A selection of Project issues

1. Original Development Agreement of 15-Oct-12 Clause 4.7

"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."

- Refusal to undertake any exploration to bring in 15 Brand Street for 4 months and only considered it after HTH stated that in not doing so NHDC were in breach of the DA.
- Actively discouraged HTH from applying for planning permission.

2. Tender process

- a. Poor management of the tender process, (allowed only 6 days over the holiday period for response) with result that only 3 contractors would meet the technical and financial criteria.
- b. Did not comply with NHDC's tender process re opening of tenders.
- c. Refused to let HTH have a copy of the Tender document - to date this has never been provided.

3. Contractual

- a. Following the signing of the Development Agreement on 9th September 2013 we requested a certified copy of the construction contract and up to date drawings, a legal requirement. This was eventually delivered to our lawyers with detailed drawings on 7th February 2014.

4. Full Council meeting of 8th August 2013.

- a. Initially provided incorrect information to elected members. Following HTH's strong representation this necessitated an addendum to the report where the word 'material' was removed. In addition, against legal advice, the word "guarantee" was used which was a misrepresentation of the fact.

** HTH also realised that the Architects had produced a scheme that would not look aesthetically pleasing, so with community support, HTH negotiated and purchased 15 Brand Street. Mr Robinson insisted that we should not apply for planning permission, something we did, at considerable expense, incurring his displeasure. This being evidenced by his report to Full Council on 8th August 2013 Appendix 1.*



5. Refused to:

- a. provide ******detailed drawings of the work being undertaken in the Town Hall.
- b. set regular programmed meeting of Project Board and Design Review meetings.
- c. program regular site visits.

******The provision of detailed plans were reluctantly provided on 1st November 2013 (287 files). Seeing the enormity of the task we approached a professional Project Manager who is a FRICS who, over the Christmas period, agreed to assist. Since that time he has been going through the myriad of detailed plans many of which are dated November 2012 and could easily have been provided sooner. Withholding such important information is not only contrary to the spirit of cooperative working, but in our opinion is a blatant attempt to ensure that HTH were unable to request any changes to the process.

6. Incorrect reporting of minutes of meetings:

- a. There are still some outstanding minutes (those of 15 July 2013) which were referenced at the Project Board on 11 December 2013 where the minutes, controlled by Mr Robinson state: "DLB did request that amendments to the minutes be made which reflected actions following the signing of the Development Agreement. However, as the minutes were an accurate representation of the discussion at that time, it was agreed that these would not be amended". This is false and the corrections to the minutes of meeting of 15 July 2013 (well before any signing) to which this referred have still not been amended.
- b. The minutes of meetings are being written for the file and do not represent what is actually said. By way of example the latest meeting on 28th February 2014, where lawyers were present and where copious notes were made, large amounts of critical information provided by our specialist concerning the Liaison Arrangements and areas where there had been a breach, were omitted.

7. Failure to hold a full design review.

- a. A promise was made to hold separate briefing meetings for councillors and the community groups and that there would be a full design review. This has never happened.
- b. We have constantly been told that there would be an opportunity for input into the design process but this has never happened.
- c. We were promised that the aspects of the design which were of concern to us would be looked at after the signing of the second Development Agreement on 9th September 2013 but this never happened.

HTH have constantly requested information on what was being proposed for the Town Hall but Mr Robinson has always refused to let us have detail, insisting that his brief was to deliver what he considered "appropriate". To this end we fought (we do not use the word lightly) for the inclusion of our "Essential Requirements" which were watered down considerably.

David Leal-Bennett

From: David Leal-Bennett [REDACTED]
Sent: 17 March 2014 13:55
To: 'John Robinson'; 'Brent Smith'
Cc: 'Morag Norgan'; 'david-parsley'; [REDACTED]; 'rosemaryread'; [REDACTED]; 'Stephen Pike (work)'
Subject: RE: Hitchin Town Hall

Are you now in a position to reply?



This email is intended solely for the addressee, is strictly confidential and may be legally privileged. If you are not the addressee, or the authorized agent thereof, please do not read, print, store, disseminate, distribute, copy or otherwise act in reliance on it or any attachments. If you have received this email in error, please notify us immediately and then permanently delete the message and any attachments from your computer systems. Please note that the sender does not accept any responsibility for viruses and it is your responsibility to scan the email and attachments (if any).

From: John Robinson [mailto:John.Robinson@north-herts.gov.uk]
Sent: 06 March 2014 15:18
To: Brent Smith
Cc: David Leal-Bennett; Morag Norgan; david-parsley; [REDACTED]; rosemaryread; [REDACTED]; Stephen Pike (work)
Subject: RE: Hitchin Town Hall

Dear Brent,

Thank you. I am taking advice on the matters you raise and those raised by David in his later email.

John

From: Brent Smith [REDACTED]
Sent: 06 March 2014 10:40
To: John Robinson
Cc: 'David Leal-Bennett'; 'Morag Norgan'; 'david-parsley'; [REDACTED]; 'rosemaryread'; [REDACTED]; 'Stephen Pike (work)'; Neal Charlton; Cllr Hunter T. (external); David Scholes
Subject: RE: Hitchin Town Hall

Dear John

I was surprised that even you would take the time to write a screed to me on procedural matters when your contractors were building a concrete block wall across the stage. I don't think that I could have inferred this from your various purple comments on the text of my e-mail that this was

happening, in fact the first comment led me to think that you were still considering the matter. Just to be clear, I will write to and copy in whomsoever I wish to.

I saw your technique of always saying that there would be a right time to discuss various matters but not now. I put it to you at one of the early meetings that you would then say later that we had missed our chance. This is exactly what has happened. At the meeting that we held last Friday both you and Neal Charlton admitted that we had never been told about the change in the construction of the partition on the stage to concrete blocks but that we had missed our chance to comment.

I love this building. It was the first of Hitchin's buildings that I got to know intimately when I came here in 1965. I think that you will accept that it was my idea to take down the adjoining buildings which has allowed the scheme to develop into a marvellous combined community facility and District Museum. You also know that we only went along with the stores on part of the stage (still very reluctantly as we felt them to be an unnecessary intervention) on the basis that it would be reversible. I do not believe that cutting through the surface of the stage and building a concrete block wall with ventilation plant and ducts behind it meets this requirement.

We set out what we wanted in our "Essential Requirements" and made specific reference to the words on page 12 of the BFAW Design and Access Statement.

I am going to fight you on this using any means open to me. I think that you have shown your disregard to the statutory procedures required to vary a Listed Building consent, as well as your disregard of our wishes by your statement "as the original wording of the Design & Access Statement is no longer deliverable in the context of the approved design". This contains the confirmation that you knew it to be a variation before you did it and that you think that "no longer deliverable" allows you to make the change without consultation and agreement – well it doesn't!

The e-mail from Sharon of yesterday (Wednesday) stated "this may be subject to change as we are still awaiting a formal response from the Planning Authority", but you still went ahead with the laying of the concrete blocks. It is obvious that this work is not on the critical path of the construction work. We advised you of the breach as soon as we were aware of it. By proceeding with the work you are not only seeking to stifle debate with us and to pre-judge the views of the emergency Project Board but are exposing your Authority to maximum financial damage.

You are not working in partnership with us. You are not giving us the respect that we deserve as the representatives of the community groups and as the organisation that has levered in over a million pounds into this project.

I will not be attending the Project Board on Monday.

Brent Smith

From: John Robinson [<mailto:John.Robinson@north-herts.gov.uk>]

Sent: 05 March 2014 12:15 PM

To: Brent Smith

Cc: David Leal-Bennett; Morag Norgan; david-parsley@north-herts.gov.uk; rosemaryread@north-herts.gov.uk; Stephen Pike (work)

Subject: FW: Hitchin Town Hall

Dear Brent,

Thanks for your email and apologies for the short delay in responding – we have been concentrating on dealing with the substantive issues in connection with the alleged breach and, as you know, have now pencilled in Monday of next week as a date for a Project Board meeting.

I note that you have been writing on behalf of Hitchin Town Hall Ltd over recent days and wanted to confirm that you, rather than David Leal-Bennett, are now acting as Hitchin Town Hall Ltd's 'lead' for the purposes of communicating in the context of the project. Could you please confirm?

I do also need to draw to your attention once again the need for Hitchin Town Hall Ltd's communications to NHDC to be limited to me and not, as has been the case in this email string to NHDC Councillors or the Council's contractors. We have raised this matter on a number of occasions with Hitchin Town Hall Ltd and most recently at our meeting last Friday where I indicated the continuation of communications in this way appeared to us to be tantamount to a breach of the Development Agreement and, although it is not our intention to pursue this in a more formal way at present, I do need to emphasise that working in this way is causing NHDC significant additional effort at a time when we are trying to focus on resolving the matters of concern you have raised. I have continued to copy in your Directors on my responses where you have initiated the correspondence and done so. I will continue to do this unless you request otherwise.

An example of how Hitchin Town Hall Ltd's actions are creating unnecessary distractions and risks occurred at last night's Hitchin Area Committee where a Councillor raised what was described as the unhappiness of Hitchin Town Hall Directors concerning the current dispute. Although the Councillor was advised discussion on this matter was inappropriate as it concerned issues which could compromise the Council's position in respect of contractual matters, the fact that the matter has been raised in public again causes us gross concern that attempts are being made to influence the outcome of our negotiations contrary to the spirit of the Development Agreement and our partnership more generally.

I trust you will give careful consideration to these matters and modify your approach accordingly.

As far as the queries you have raised in your email are concerned I have provided a brief response where appropriate. As I said earlier, our focus is on dealing with the notice of breach you have provided us with and we can give attention to the other unconnected or less pressing issues once this has been resolved.

My responses to the additional points you raise appear in **purple** below:

John

From: Brent Smith [mailto: [REDACTED]]
Sent: 04 March 2014 11:38
To: John Robinson
Cc: 'David Leal-Bennett'; 'Morag Norgan'; 'David Parsley'; 'Rosemary Read'; 'Stephen Pike (work)'; Cllr Hunter T. (external); Neal Charlton
Subject: RE: Hitchin Town Hall

Dear John

We are extremely concerned at your unsatisfactory and unhelpful response which seems to ignore the fundamental points raised at our meeting. In fact you appear to be missing the point that this is a breach of HTH's requirements - the D&A statement is merely amplification of this. It gives rise to the following initial queries and comments:

- What on earth does "having considered the issues broadly" mean? We are claiming that you are in breach on the precise and narrow issue of the reversibility of carrying out the work on the stage in a way that it is reversible by us as and when we are able to do so in the future. Our complaint refers to the construction being in concrete blocks and the ventilation system having plant and ducts within the stage. You are well aware both through the wording of our Essential Requirements in the Development Agreement and the many debates between us that the reversibility of this work is of fundamental importance to us and the community groups that we represent.**[John Robinson] The phrase means just that, I do not think any further elaboration can be provided, other than to say the alleged breach would have consequences which will need to be resolved, but I can confirm we understand the nature of the alleged breach is in respect of the contractual matters you cite.**
- "we do not believe the work constitutes a breach of contract as the original wording of the Design & Access Statement is no longer deliverable in the context of the approved design". We were surprised by the attitude of yourself and your architect on the significance of the wording of the original BFAW Design and Access Statement, both at the meeting and in the exchange of e-mails that preceded it. The reversibility of the construction and the fact that it would not injure the building was fundamental to your argument to the grant of Listed Building consent for this work on the stage.
Whilst we are not basing our claim of breach on whether or not you are in compliance with the Listed Building consent, we do feel that since you are in the position of "marking your own homework" in this respect you must apply at least the same level of care that you would when dealing with a third party.**[John Robinson] The 'Planning Authority' acts independently and, in that sense, we are not 'marking our own homework' - I understand the need however for complete transparency and we will make advice/guidance from Planning available as you requested.** In the original Listing Report it was stated that there are many Town Halls that could be considered for Listing and that the bar to such Listing is consequently high. One of the reasons that our Town Hall was chosen for Listing was its completeness. Surely by stating that it is "no longer deliverable" this constitutes a variation to the Listed Building consent which requires the grant of a new consent.**[John Robinson] See previous comments**
The paragraph from the DAS (page 12) was used in the DA as part of the clause relating to reversibility. The DA was not signed until October 2013 **[This was signed on 9th September 2013 although the original Design & Access Statement was submitted considerably before that point with the original application].** Nothing has changed since then. You appear to be saying that you have deliberately ignored this requirement and that your design team had already set in motion work not in compliance with it before the DA was signed.**[John Robinson] Hitchin Town Hall Ltd attended these Design Team meetings and were given access to the plans as they evolved. We have already asked for a detailed report on this following our meeting on Friday last week.**

- "This leave us in the position of trying to find a pragmatic solution which we are currently trying to achieve". What "pragmatic solutions" are you considering when the first sentence of your reply states "I confirm that work on the stage has not stopped"? **[John Robinson] BFAW are liaising with the Planning Authority to identify an appropriate approach.**

On a separate but related matter, when we visited the building to remove the balcony seating to your storage, we thought that the hall floor was springy. We raised the question as to whether it had been wound down before being used for storage. When we visited on 24th February to inspect the stage we found that it still appeared to be sprung and that bricks and concrete blocks had been stored on it. Neither your project manager nor the site agent knew how to lower it. We trust that the floor has now been lowered and that no permanent damage has been done to its mechanism (which, in addition to being of enormous importance to us, is specifically mentioned in the Listing). **[John Robinson] We have received advice from BFAW that the approach to safeguarding the Mountford Hall floor has been not to adjust the tensioning as, to the best of our knowledge, the mechanism has not been operated for a significant period and its effectiveness is not established. The floor has been physically protected and construction**

contractor instructed not to store heavy items on the surface during construction works. The relatively minor quantities of material which were temporarily held in this area were a very small proportion of the sort loading created by several hundred hall users and for which it was specifically designed. In these circumstances we do not believe that the current approach represents any threat to the integrity of the floor.

We do not feel that this project is being carried out with the care and consideration that it justifies and trust that you will rectify this.

We cannot overemphasize how serious we consider this and it is now a contractual issue which must be addressed through the formal process laid down in the DA. At the meeting we requested, in accordance with the requirements under the DA, that you now set up a series of Design Team meetings in order that issues be discussed. Would you please let us have these proposed dates as a matter of urgency. **[John Robinson] We believe we are complying with the Development Agreement requirements in this respect. Programmed meetings were arranged and held on 3rd October 2012, 17th December 2012 and 23rd January 2013, 7th May 2013, 6th June 2013, 27th June 2013, 30th October 2013 and 8th January 2014 as the scheme was being developed. No further pre planned design changes are programmed and we have and will continue to hold ad-hoc meetings where changes are proposed. As far as the construction element is concerned I am happy to arrange meetings at appropriate points in the project and will seek to advise as to when these might be and suggest dates in due course.**

You also stated that you would set up an urgent Project Board meeting, please can you liaise with us to ensure we are able to attend this important meeting. **[John Robinson] - we are awaiting feedback from Planning Authority and will arrange as soon as possible once we have received this, hopefully for Monday of next week.**

Finally, we requested weekly site visits so that a representative from HTH can have the opportunity to examine the work being undertaken. It is our preference for these to be on Fridays so will you please advise what time would be convenient this Friday and future Fridays. **[John Robinson] Keith Gaynor will be touch directly with you on this.**

We look forward to a more helpful and reasonable reply.

Brent Smith
Chairman Hitchin Town Hall Ltd

From: John Robinson [<mailto:John.Robinson@north-herts.gov.uk>]
Sent: 03 March 2014 4:04 PM
To: Brent Smith
Cc: David Leal-Bennett; Morag Norgan; David Parsley; David Morgan; Rosemary Read; Stephen Pike (work)
Subject: RE: Hitchin Town Hall

Brent,

Thanks for your email the contents of which I note. As far as your final query is concerned I confirm that work on the stage has not stopped because, having considered the issues broadly, we do not believe the work constitutes a breach of contract as the original wording of the Design & Access Statement is no longer deliverable in the context of the approved design through no fault of the parties. This leaves us in the position of trying to find a pragmatic solution which we are currently trying to achieve.

Regards

John

From: Brent Smith [<mailto:> 
Sent: 03 March 2014 11:57
To: John Robinson
Cc: Neal Charlton; David Leal-Bennett; Morag Norgan; David Parsley; David Morgan; Rosemary Read; Stephen Pike (work); Cllr Hunter T. (external)
Subject: Hitchin Town Hall

Dear John

Further to the meeting on Friday, we were asked for suggestions as to how the partition should be constructed. We declined to give a view then, as we did not feel that it is appropriate for us to be making such detailed design suggestions, particularly as we never wanted it to be there. However, we thought that it would be helpful for us to appraise you of our thoughts:

- The intervention on the stage must be reversible and this must apply to the ventilation ductwork and plant as well as the partition.
- You made great play of your legal obligation to secure "best value". We would suggest the breaching our Essential Requirements and possibly sliding into a legal battle is not the best way to achieve "best value".
- We delivered 15 Brand Street into the scheme giving you additional floorspace. We requested that this be used to remove the need for building on the stage (but we accept

that you have no contractual obligation to do so although we do feel that you hold a moral obligation to do so in the light of Tony Hunter's assurance that you would rethink aspects of the scheme after our signing of the Development Agreement).

- You have argued throughout that this stage storage was required for the operation of the museum, and this was the basis of you obtaining Listed Building consent for it. From what we saw from the drawings, the upper level of this storage is compromised by the ventilation plant and the overall net gain is now very small in comparison with the damage being done to achieve it.
- We are very concerned with regard to the location of the ventilation plant and the proposal to blow fresh air through the front of the stage directly at the audience. The existing front panelling of the stage is backed by a brick wall. Do you have Listed Building consent for its demolition/perforation?
- One of our supporters is prepared to offer you the same amount of storage which you would have had at both levels, rent free for two years, on the opposite side of Brand Street. We have pointed out several times that perfect, secure storage is available next door over Argos and New Look. Having this would save staff time (and therefore cost) and would allow you to dispose of Bury Mead Road (which we believe to be a valuable site) and remove the ongoing burden of its maintenance. We know that this space was available when we first put it to you, we would be happy to make contact again and see if this can be revived?
- You surely have a vested interest in us running the Town Hall successfully (just as we have an interest in the museum being a popular attraction). It must be in the best interest of NHDC for us to be able to use the hall for the live performances which we want to. We are working together to maximise the benefit of the building to the community of North Hertfordshire.
- We believe that best value lies in you leaving the stage intact without the storage and in your consultants rethinking the ventilation which does not appear to be fit for purpose as presently designed.

We trust that you find the above to be helpful and look forward to hearing from you. We would be grateful if you could confirm that you have stopped work on the stage, so far you have only said so far that you would not work on the stage during last Friday.

Best wishes -- Brent Smith
Chairman, Hitchin Town Hall Ltd

Any opinions expressed in this email are those solely of the individual. This email and any files transmitted with it are

Without Prejudice & Confidential

Mr Brent Smith
Chairman and Trustee
Hitchin Town Hall Ltd
2 Croft Chambers
11 Bancroft
Hitchin
SG5 1JQ

Our Ref:

JR/sn

Contact Officer:
Direct Line:
Email
Date:

John Robinson
01462 474655
John.robinson@north-herts.gov.uk
21st March 2014

Dear Brent

North Hertfordshire Museum & Hitchin Town Hall: Alleged Breach of Development Agreement

I refer to your letter of 18th March 2014 and our previous correspondence and discussions on this matter.

I note that Hitchin Town Hall Ltd are not prepared to agree an amendment to the Development Requirements as a resolution to the breach of the Development Agreement that you have alleged. Contrary to your assertion that this represents a opportunity for NHDC to 'box tick', our position remains that we are, in good faith, attempting to find an acceptable resolution to a mutual misunderstanding between the parties in a way that does not disproportionately disadvantage either and which would result in Hitchin Town Hall Ltd securing a facility within the parameters of the specification for the building as agreed between us when the Development Agreement was voluntarily entered in to by Hitchin Town Hall Ltd and NHDC in September 2013.

As our suggestion does not appear to be acceptable to you I now need to confirm that, following the Special Project Board of 10th March 2014, we do not accept, having carefully considered the report of the Project Manager and your representations, that a breach has occurred. The arrangement being offered is acceptable to the local Planning Authority and would deliver the facilities in line with the requirements as specified in the Development Agreement. Our Architect has confirmed the approach currently being taken will not entail additional cost or delay to the construction which NHDC is obliged to complete and that the intervention is, ultimately, reversible should NHDC be presented with a realistic alternative for the provision of Museum storage in the future and agree to any request to amend the layout of the building.

Whilst we understand your aspirations in this respect, despite a number of proposals from Hitchin Town Hall Ltd to provide alternative approaches for Museum storage, none of these have been affordable or practical and the assurance given by you to the Leader of the Council that the generous inclusion of 15 Brand Street by Hitchin Town Hall Ltd was without 'pre condition' means that our position on this could not be construed as a betrayal of trust or not within the spirit of partnership working as you state. In this respect, I would say that your decision to make a statement to the Comet newspaper whilst we were attempting to find a solution to this issue does little to assist constructive dialogue and portrays an inaccurate picture of the position in our view. Further, the publication of pictures which I understand were taken on your recent visit to the site appear to have been released without the permission of Borras Construction despite the fact that you were made fully aware that such permission was a reasonable condition on entry to the site.

Whilst you say that Hitchin Town Hall Ltd is not willing to accept any change in your 'essential requirements' you also state that this may be possible if we are able to reach agreement on a number of matters more fully detailed in your letter. These appear to be a combination of improvements to the agreed specification, measures already being considered or actively pursued and a request for further financial assistance. Many do not appear to be connected with the notice of breach you served by way of your letter of 25th February 2014 and it is unfortunate that Hitchin Town Hall Ltd now appear to be seeking to use the opportunity to recast elements of the Development Agreement in a number of areas which we understood to be clearly agreed between us.

In respect of the 12 areas you seek to 'reach agreement on' I would comment as follows:

1. The specification for the acoustic treatment to the block wall, stage side

The requirement for this work does not include 'acoustic treatment' in its broadest sense rather the intervention needs to act as an acoustic screen to control 'sound breakout'. Hitchin Town Hall Ltd have previously accepted this principle when previously seeking to enhance the specification to incorporate acoustic treatment in the Mountford Hall. We have agreed to look at options for the treatment of this wall as part of the agreed liaison process.

2. Moving of the duct riser to a location to the side of the stage

We have already considered your representations on this matter and BFAW are reconsidering the layout to establish if this can be achieved as agreed.

3. The specification of the ventilation installation in the stage area to ensure there is no vibration, noise output and no external break out paths from exhaust/intake points all to satisfy this critical location for performance

The agreed specification does not allow for this level of treatment. Our understanding is that some noise would be produced from this plant and that further work would be necessary to quantify the likely level of noise to consider whether measures to minimise it would be necessary or affordable. As previously discussed with you, and as has been the case with a number of changes to the design approach at the request of Hitchin Town Hall Ltd, we will do our best to accommodate this.

4. Review alternatives to front stage air supply

As with 3 above, we are happy to do this and have already asked for specific advice from BFAW.

5. Suitable velocities for fresh air supply

As in 3 and 4 above this is dependant on further advice from BFAW.

6. Remedy of inadequate costs provided for Hall decoration and repair

It is not clear what is intended by the request to 'remedy inadequate costs' as these are NHDC's responsibility as outlined in the Development Agreement. Should the provisional sum included for decoration and repair prove to be inadequate NHDC will be liable to meet the cost without financial detriment to Hitchin Town Hall Ltd

7. Full review of the balcony proposals

At the Design & Construction Team meeting on 28th February 2014 BFAW requested that Hitchin Town Hall Ltd closely examine the details of this as it represented the second major intervention in the building. At that time your technical advisor David Parsely confirmed that he had examined the drawings and had no particular problems with the detail. Could you therefore advise which specific aspects of the agreed treatment of the balcony you wish to be reviewed.

8. Review of Electrical services and amendment where deficient e.g. Data to Hall

Arrangements have already been made to meet with your representative to review the Mechanical and Electrical specification. It should be noted, however, that the specification has already been provided to Hitchin Town Hall Ltd in September 2013 and that no detailed comments were received prior to the issue of the detailed specification to our contractor and delays of this nature are posing a significant risk to the delivery of contract. Nevertheless, we are happy to look at this again and accommodate any reasonable changes that are affordable and practical. Anything beyond this would need to be at Hitchin Town Hall Ltd's expense.

9. Provision of the initial acoustic break out survey and proof of the built in improvement to satisfy the HTH requirement

This was requested at the Design & Construction meeting on 28th February 2014 and will be provided by BFAW in due course.

10. Adoption of a full liaison process as required by Clause 16 of the Development Agreement including:

- a. Establishment of the Design Project Group
- b. Set regular meeting dates
- c. Issue of Contractors Project Meeting minutes
- d. Issue of Contract Programme
- e. Variations
- f. Contractors' design information
- g. Drawing register updated and revised drawings issued
- h. Agreed weekly site access for Hitchin Town Hall

The scope of Clause 16 is not as broad as implied by this statement. As you are aware, the Design & Construction Team has been established for a considerable time and we are in the process of programming further meetings of it at appropriate points throughout the lifespan on the contract. In addition, adhoc meetings will continue to be called when circumstances require it. The 'Contractor's Project Meeting' minutes are not required to be circulated but we are happy to provide you with a written monthly project update which would include reports on the contract programme, variations, contractor's design information and the drawing register and revised drawings issued. This would not replace the existing provisions of the Development Agreement which require the Council to agree variations to relevant Approved Documents with Hitchin Town Hall Ltd where these do not meet Hitchin Town Hall Ltd's Development Requirements. Finally, as we have previously advised you, we are liaising with our construction contractor to facilitate regular site access in a way that will not impede the construction programme. We are concerned however that the publication of pictures taken on a recent visit and referred to above together with an attempt to enter the site by one of your Directors

without our approval has created the circumstances in which there is understandable concern about this.

11. **Acceptance that if HTH raise the necessary money to fund the provision of acoustic panels to follow the curved ceiling NHDC will accept this work as a variation to the Boras contract**

It is noted that Hitchin Town Hall Ltd do not currently have the necessary funds to carry out this work and I am aware that you have not been able to commence repayment of the loan granted by NHDC as originally envisaged. We would expect that, by this stage of the project, your fundraising activity would have commenced and that the first call on any funds raised would be the repayment of this debt. Such works would represent a significant additional cost and I can confirm that NHDC would have no budget to undertake such work. The implications on the construction contract from any additional works such as acoustic panelling would also need to be carefully considered.

12. **NHDC to bear any legal costs in any documentation variations**

This is not acceptable to NHDC as any variation is, as I stated at the outset of this letter, in our view a result of a mutual misunderstanding between the parties.

Yours sincerely

John Robinson
Strategic Director Customer Services

Emailed and hard copy to registered office.

David Leal-Bennett

From: David Leal-Bennett [REDACTED]
Sent: 06 March 2014 14:24
To: 'John Robinson'; 'Brent Smith'
Cc: 'Morag Norgan'; 'david-parsley@hitchintownhall.com'; 'rosemaryread@hitchintownhall.com'; 'Stephen Pike (work)'
Subject: RE: Hitchin Town Hall

John

I am not commenting on your response to Brent, copied to us all, as he has replied direct. We have of course subsequently spoken and you have advised that in erecting the concrete block wall, you as NHDC's representative were not prepared to wait, even though it was not on the critical path, and refused to delay until our meeting next Monday, something any reasonable person would have done. I will however comment on your introductory text as follows and in red for ease.

Thanks for your email and apologies for the short delay in responding – we have been concentrating on dealing with the substantive issues in connection with the alleged breach and, as you know, have now pencilled in Monday of next week as a date for a Project Board meeting. **Noted**

I note that you have been writing on behalf of Hitchin Town Hall Ltd over recent days and wanted to confirm that you, rather than David Leal-Bennett, are now acting as Hitchin Town Hall Ltd's 'lead' for the purposes of communicating in the context of the project. Could you please confirm? **I remain the prime point of contact, but as Brent signed the original letter, he has authority to respond. This does not cause a communication problem for HTH and it should not with you.**

I do also need to draw to your attention once again the need for Hitchin Town Hall Ltd's communications to NHDC to be limited to me and not, as has been the case in this email string to NHDC Councillors or the Council's contractors. **(Brent's response went to those who attended the meeting which was only courteous.)** We have raised this matter on a number of occasions with Hitchin Town Hall Ltd and most recently at our meeting last Friday where I indicated the continuation of communications in this way appeared to us to be tantamount to a breach of the Development Agreement **(perhaps you could advise of specific breaches and also to which clause you are referring)** and, although it is not our intention to pursue this in a more formal way at present, I do need to emphasise that working in this way is causing NHDC significant additional effort at a time when we are trying to focus on resolving the matters of concern you have raised. **(This is called checks & balances and for the Public Sector it is correct that officers should be held to account, it's the democratic process - I do not think that we have yet reached an autocracy in this country. If any trustee or indeed any member of the public need to raise issues with their elected members then they are entitled so to do)** I have continued to copy in your Directors on my responses where you have initiated the correspondence and done so. I will continue to do this unless you request otherwise. **Noted and please continue.**

An example of how Hitchin Town Hall Ltd's actions are creating unnecessary distractions and risks occurred at last night's Hitchin Area Committee where a Councillor raised what was described as the unhappiness of Hitchin Town Hall Directors concerning the current dispute. Although the Councillor was advised discussion on this matter was inappropriate as it concerned issues which could compromise the Council's position in respect of contractual matters, the fact that the matter has been raised in public again causes us gross concern that attempts are being made to influence the outcome of our negotiations contrary to the spirit of the Development Agreement and our partnership more generally. **As I mentioned when we spoke, we take great exception to the implication that HTH are leaking information. As I stated on the telephone I am furious that this appears to be in the Public Domain. HTH are about to launch a major fundraising campaign and it is not in our interest for the public to know there is a dispute. Who will give money if there is a conflict, the impact is unthinkable; you are fully aware of what any leak will do to**

us. I also mentioned that, at the wake I attended on Tuesday, I was approached by two individuals who asked me as it true that there had been some 'damage' to the stage, I could only respond that we are always in discussion with NHDC about many issues. So how has this got out, perhaps you can look within NHDC!

I understand that in presenting your report to Hitchin Committee, you stated that everything was in order, which you know was not the case - serving notice of breach of contract is pretty fundamental. I understand that you did not even caveat the report with some words such as "there are some issues that are being resolved". Surely this is a misrepresentation of the position to elected members?

I trust you will give careful consideration to these matters and modify your approach accordingly. We do not need to be lectured by you John and in turn strongly suggest that you adopt a less confrontational approach and move to a more cooperative partnership dialogue.

As far as the queries you have raised in your email are concerned I have provided a brief response where appropriate. As I said earlier, our focus is on dealing with the notice of breach you have provided us with and we can give attention to the other unconnected or less pressing issues once this has been resolved. To assist in a resolution any reasonable person would have halted work on the stage work for a few days, which was not time critical, you have not done this.

My responses to the additional points you raise appear in purple below:

I fail to understand why you are moving forward in a self destruct mode, we need to resolve this issue and others that will be presented shortly.

Best regards,

John Robinson



This email is intended solely for the addressee, is strictly confidential and may be legally privileged. If you are not the addressee, or the authorized agent thereof, please do not read, print, store, disseminate, distribute, copy or otherwise act in reliance on it or any attachments. If you have received this email in error, please notify us immediately and then permanently delete the message and any attachments from your computer systems. Please note that the sender does not accept any responsibility for viruses and it is your responsibility to scan the email and attachments (if any).

From: John Robinson [mailto:John.Robinson@north-herts.gov.uk]
Sent: 05 March 2014 12:15
To: Brent Smith
Cc: David Leal-Bennett; Morag Norgan; david-parsley [REDACTED]; rosemaryread [REDACTED]; Stephen Pike (work)
Subject: FW: Hitchin Town Hall

Dear Brent,

Thanks for your email and apologies for the short delay in responding - we have been concentrating on dealing with the substantive issues in connection with the alleged breach and, as you know, have now pencilled in Monday of next week as a date for a Project Board meeting.

I note that you have been writing on behalf of Hitchin Town Hall Ltd over recent days and wanted to confirm that you, rather than David Leal-Bennett, are now acting as Hitchin Town Hall Ltd's 'lead' for the purposes of communicating in the context of the project. Could you please confirm?

do also need to draw to your attention once again the need for Hitchin Town Hall Ltd's communications to NHDC to be limited to me and not, as has been the case in this email string to NHDC Councillors or the Council's contractors. We have raised this matter on a number of occasions with Hitchin Town Hall Ltd and most recently at our meeting last Friday where I indicated the continuation of communications in this way appeared to us to be tantamount to a breach of the Development Agreement and, although it is not our intention to pursue this in a more formal way at present, I do need to emphasise that working in this way is causing NHDC significant additional effort at a time when we are trying to focus on resolving the matters of concern you have raised. I have continued to copy in your Directors on my responses where you have initiated the correspondence and done so. I will continue to do this unless you request otherwise.

An example of how Hitchin Town Hall Ltd's actions are creating unnecessary distractions and risks occurred at last night's Hitchin Area Committee where a Councillor raised what was described as the unhappiness of Hitchin Town Hall Directors concerning the current dispute. Although the Councillor was advised discussion on this matter was inappropriate as it concerned issues which could compromise the Council's position in respect of contractual matters, the fact that the matter has been raised in public again causes us gross concern that attempts are being made to influence the outcome of our negotiations contrary to the spirit of the Development Agreement and our partnership more generally.

I trust you will give careful consideration to these matters and modify your approach accordingly.

As far as the queries you have raised in your email are concerned I have provided a brief response where appropriate. As I said earlier, our focus is on dealing with the notice of breach you have provided us with and we can give attention to the other unconnected or less pressing issues once this has been resolved.

My responses to the additional points you raise appear in **purple** below:

John

From: Brent Smith [mailto: [REDACTED]]

Sent: 04 March 2014 11:38

To: John Robinson

Cc: 'David Leal-Bennett'; 'Morag Norgan'; 'David Parsley'; 'Rosemary Read'; 'Stephen Pike (work)'; Cllr Hunter T. (external); Neal Charlton

Subject: RE: Hitchin Town Hall

Dear John

We are extremely concerned at your unsatisfactory and unhelpful response which seems to ignore the fundamental points raised at our meeting. In fact you appear to be missing the point that this is a breach of HTH's requirements - the D&A statement is merely amplification of this. It gives rise to the following initial queries and comments:

- What on earth does "having considered the issues broadly" mean? We are claiming that you are in breach on the precise and narrow issue of the reversibility of carrying out the work on the stage in a way that it is reversible by us as and when we are able to do so in the future. Our complaint refers to the construction being in concrete blocks and the ventilation system having plant and ducts within the stage. You are well aware both through the wording of our Essential Requirements in the Development Agreement and the many debates

between us that the reversibility of this work is of fundamental importance to us and the community groups that we represent.**[John Robinson]** The phrase means just that, I do not think any further elaboration can be provided, other than to say the alleged breach would have consequences which will need to be resolved, but I can confirm we understand the nature of the alleged breach is in respect of the contractual matters you cite.

- "we do not believe the work constitutes a breach of contract as the original wording of the Design & Access Statement is no longer deliverable in the context of the approved design". We were surprised by the attitude of yourself and your architect on the significance of the wording of the original BFAW Design and Access Statement, both at the meeting and in the exchange of e-mails that preceded it. The reversibility of the construction and the fact that it would not injure the building was fundamental to your argument to the grant of Listed Building consent for this work on the stage.

Whilst we are not basing our claim of breach on whether or not you are in compliance with the Listed Building consent, we do feel that since you are in the position of "marking your own homework" in this respect you must apply at least the same level of care that you would when dealing with a third party.**[John Robinson]** The 'Planning Authority' acts independently and, in that sense, we are not 'marking our own homework' – I understand the need however for complete transparency and we will make advice/guidance from Planning available as you requested. In the original Listing

Report it was stated that there are many Town Halls that could be considered for Listing and that the bar to such Listing is consequently high. One of the reasons that our Town Hall was chosen for Listing was its completeness. Surely by stating that it is "no longer deliverable" this constitutes a variation to the Listed Building consent which requires the grant of a new consent.**[John Robinson]** See previous comments

The paragraph from the DAS (page 12) was used in the DA as part of the clause relating to reversibility. The DA was not signed until October 2013 **[This was signed on 9th September 2013 although the original Design & Access Statement was submitted considerably before that point with the original application]**. Nothing has changed since then. You appear to be saying that you have deliberately ignored this requirement and that your design team had already set in motion work not in compliance with it before the DA was signed.**[John Robinson]** Hitchin Town Hall Ltd attended these Design Team meetings and were given access to the plans as they evolved. We have already asked for a detailed report on this following our meeting on Friday last week.

- "This leave us in the position of trying to find a pragmatic solution which we are currently trying to achieve". What "pragmatic solutions" are you considering when the first sentence of your reply states "I confirm that work on the stage has not stopped"?**[John Robinson]** BFAW are liaising with the Planning Authority to identify an appropriate approach.

On a separate but related matter, when we visited the building to remove the balcony seating to your storage, we thought that the hall floor was springy. We raised the question as to whether it had been wound down before being used for storage. When we visited on 24th February to inspect the stage we found that it still appeared to be sprung and that bricks and concrete blocks had been stored on it. Neither your project manager nor the site agent knew how to lower it. We trust that the floor has now been lowered and that no permanent damage has been done to its mechanism (which, in addition to being of enormous importance to us, is specifically mentioned in

the Listing). **[John Robinson]** We have received advice from BFAW that the approach to safeguarding the Mountford Hall floor has been not to adjust the tensioning as, to the best of our knowledge, the mechanism has not been operated for a significant period and its effectiveness is not established. The floor has been physically protected and construction contractor instructed not to store heavy items on the surface during construction works. The relatively minor quantities of material which were temporarily held in this area were a very small proportion of the sort loading created by several hundred hall users and for which it was specifically designed. In these circumstances we do not believe that the current approach represents any threat to the integrity of the floor.

We do not feel that this project is being carried out with the care and consideration that it justifies and trust that you will rectify this.

We cannot overemphasize how serious we consider this and it is now a contractual issue which must be addressed through the formal process laid down in the DA. At the meeting we requested, in accordance with the requirements under the DA, that you now set up a series of Design Team meetings in order that issues be discussed. Would you please let us have these proposed dates as a matter of urgency. **[John Robinson]** We believe we are complying with the Development Agreement requirements in this respect. Programmed meetings were arranged and held on 3rd October 2012, 17th December 2012 and 23rd January 2013, 7th May 2013, 6th June 2013, 27th June 2013, 30th October 2013 and 8th January 2014 as the scheme was being developed. No further pre planned design changes are programmed and we have and will continue to hold ad-hoc meetings where changes are proposed. As far as the construction element is concerned I am happy to arrange meetings at appropriate points in the project and will seek to advise as to when these might be and suggest dates in due course.

You also stated that you would set up an urgent Project Board meeting, please can you liaise with us to ensure we are able to attend this important meeting. **[John Robinson]** - we are awaiting feedback from Planning Authority and will arrange as soon as possible once we have received this, hopefully for Monday of next week.

Finally, we requested weekly site visits do that a representative from HTH can have the opportunity to examine the work being undertaken. It is our preference for these to be on Fridays so will you please advise what time would be convenient this Friday and future Fridays. **[John Robinson]** Keith Gaynor will be touch directly with you on this.

We look forward to a more helpful and reasonable reply.

Brent Smith
Chairman Hitchin Town Hall Ltd

From: John Robinson [<mailto:John.Robinson@north-herts.gov.uk>]
Sent: 03 March 2014 4:04 PM
To: Brent Smith

Cc: David Leal-Bennett; Morag Norgan; David Parsley; David Morgan; Rosemary Read; Stephen Pike (work)
Subject: RE: Hitchin Town Hall

Brent,

Thanks for your email the contents of which I note. As far as your final query is concerned I confirm that work on the stage has not stopped because, having considered the issues broadly, we do not believe the work constitutes a breach of contract as the original wording of the Design & Access Statement is no longer deliverable in the context of the approved design through no fault of the parties. This leave us in the position of trying to find a pragmatic solution which we are currently trying to achieve.

Regards

John

From: Brent Smith [mailto:brent@hitchin.gov.uk]
Sent: 03 March 2014 11:57
To: John Robinson
Cc: Neal Charlton; David Leal-Bennett; Morag Norgan; David Parsley; David Morgan; Rosemary Read; Stephen Pike (work); Cllr Hunter T. (external)
Subject: Hitchin Town Hall

Dear John

Further to the meeting on Friday, we were asked for suggestions as to how the partition should be constructed. We declined to give a view then, as we did not feel that it is appropriate for us to be making such detailed design suggestions, particularly as we never wanted it to be there. However, we thought that it would be helpful for us to appraise you of our thoughts:

- The intervention on the stage must be reversible and this must apply to the ventilation ductwork and plant as well as the partition.
- You made great play of your legal obligation to secure "best value". We would suggest the breaching our Essential Requirements and possibly sliding into a legal battle is not the best way to achieve "best value".
- We delivered 15 Brand Street into the scheme giving you additional floorspace. We requested that this be used to remove the need for building on the stage (but we accept that you have no contractual obligation to do so although we do feel that you hold a moral obligation to do so in the light of Tony Hunter's assurance that you would rethink aspects of the scheme after our signing of the Development Agreement).
- You have argued throughout that this stage storage was required for the operation of the museum, and this was the basis of you obtaining Listed Building consent for it. From what we saw from the drawings, the upper level of this storage is compromised by the ventilation plant and the overall net gain is now very small in comparison with the damage being done to achieve it.

- We are very concerned with regard to the location of the ventilation plant and the proposal to blow fresh air through the front of the stage directly at the audience. The existing front panelling of the stage is backed by a brick wall. Do you have Listed Building consent for its demolition/perforation?
- One of our supporters is prepared to offer you the same amount of storage which you would have had at both levels, rent free for two years, on the opposite side of Brand Street. We have pointed out several times that perfect, secure storage is available next door over Argos and New Look. Having this would save staff time (and therefore cost) and would allow you to dispose of Bury Mead Road (which we believe to be a valuable site) and remove the ongoing burden of its maintenance. We know that this space was available when we first put it to you, we would be happy to make contact again and see if this can be revived?
- You surely have a vested interest in us running the Town Hall successfully (just as we have an interest in the museum being a popular attraction). It must be in the best interest of NHDC for us to be able to use the hall for the live performances which we want to. We are working together to maximise the benefit of the building to the community of North Hertfordshire.
- We believe that best value lies in you leaving the stage intact without the storage and in your consultants rethinking the ventilation which does not appear to be fit for purpose as presently designed.

We trust that you find the above to be helpful and look forward to hearing from you. We would be grateful if you could confirm that you have stopped work on the stage, so far you have only said so far that you would not work on the stage during last Friday.

Best wishes -- Brent Smith
Chairman, Hitchin Town Hall Ltd

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14. Prince II

Prince II - email trail

From: David Parsley [mailto:david.parsley@north-herts.gov.uk]
Sent: 23 April 2014 16:51
To: David Leal - Bennett
Subject: RE: Formal response and Prince II

David - the principal of Prince 2 is that all stake holders are involved in the stage 'gateway' decisions so that there is accord as the project progresses .

This has never happened in this case .

Regards

David

From: John Robinson [mailto:John.Robinson@north-herts.gov.uk]
Sent: 23 April 2014 11:07
To: David Leal-Bennett
Subject: Formal response and Prince II

David,

Firstly, I do not recognise your description of Prince 2. It is not a "tick box" exercise nor is it "designed to ensure Public Sector projects are conducted in a manner fit for scrutiny".

I do not believe it is incumbent on me to provide you with an interpretation of the Prince 2 methodology in the context of this project as the role of HTH is very specific, i.e. acting as one of the "Senior Customers" and this role was explained via reports to at least two Project Boards. Prince 2 merely a process NHDC has adopted to deliver key projects and, in this case, the specific authority delegated to me by Council was that contained in the draft Development Agreement and associated reports agreed by Council on the 15.10.12, 23.04.14 and 08.08.13.. HTH's rights and obligations are set out in the Development Agreement, not in the Prince 2 process.

Perhaps it might help if David Parsley was able to explain why he considers a "breach" in our application of Prince 2 has occurred and specifically how this has been to the detriment of HTH Ltd's rights under the Development Agreement.

Thank you.

John Robinson

From: David Leal-Bennett [mailto:david.leal-bennett@north-herts.gov.uk]
Sent: 11 April 2014 11:10
To: John Robinson
Cc: 'David Parsley'
Subject: RE: Formal response and Prince II

I am afraid this does not answer the question posed and leaves the matter vague and subject to interpretation. It is acknowledged that PII it is a tick box process designed to ensure that Public Sector projects are conducted in a manner fit for scrutiny. However you specifically said, when David Parsley stated that you were in breach of PII, that you were using NHDC's version of PII which is why we asked the question:

"In the circumstances would you please advise us what specific changes have been made to Prince II or what sections have been adopted by NHDC (and when) and which parts have been omitted. Please may we have this in a manner that the man in the street is able to understand."

I am aware of the DA but wish to have clarification as requested above.

By way of example, under the DA you have included that you as Project Director have the final say and that members of the Board only have input via discussion, ergo, if all members want A and you want B then your decision is final. Are 'standard' PII rules for this process the same?

So HTH would like to know what differences there are in the "NHDC adopted version" because we can't continue with statements made above when we are not fully conversant with an NHDC version.

I would appreciate clarity.

David, 14/04/2014

From: John Robinson [<mailto:John.Robinson@north-herts.gov.uk>]
Sent: 09 April 2014 15:20
To: David Leal-Bennett
Subject: RE: Formal response and Prince II

David,

The method is referenced in Annex 5 of the Development Agreement which also contains a link to the Prince website.

This describes Prince 2 as 'not a one size fits all solution: it is a flexible framework that can be readily tailored to any type or size of project'. NHDC's approach for this project is illustrated in the Project Board documentation you have already received.

John Robinson
Strategic Director Customer Services

Prince II - email trail

From: David Leal-Bennett [mailto: [REDACTED]]
Sent: 25 March 2014 10:08
To: John Robinson
Cc: david-parsley@ [REDACTED]
Subject: RE: Formal response and Prince II

We need a response today and prior to my meeting with ACF, this should be a straightforward issue and a matter of record.

Thank you

From: David Leal-Bennett [mailto: [REDACTED]]
Sent: 24 March 2014 09:25
To: John Robinson; brent@walden [REDACTED]
Cc: david-parsley@ [REDACTED]
Subject: Formal response and Prince II

Thank you,

We are taking advice and will revert.

In the meantime we would ask that you clarify a point concerning Prince II.

When we recently met, David Parsley stated that you were not following Prince II procedures to which you responded that you were using Prince II as amended by NHDC, or words to that effect.

We are also aware that when we met at a Project Board meeting last year, in the presence of ACF, you stated that Prince II was being used but never qualified its use. ACF's Julie Raymond responded that she was familiar with Prince II but you did not state that there was an NHDC version.

In the circumstances would you please advise us what specific changes have been made to Prince II or what sections have been adopted by NHDC (and when) and which parts have been omitted. Please may we have this in a manner that the man in the street is able to understand.

Exhibit 14

FORMAL COMPLAINT TO BUTTRESS FOR MISREPRESENTATION



HITCHIN TOWN HALL LTD

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G Sorby Esq
Managing Director
Buttress
41 Bengal Street
Manchester M4 6AF

26th June 2014

Dear Mr Sorby,

Complaint – Refurbishment of Hitchin Town Hall (a listed building) to provide a Community Facility and Museum for North Hertfordshire (the "Project")

We write to make a formal complaint in relation to the Project.

Hitchin Town Hall Ltd ("HTH") is a senior partner in the Project and has signed a Development Agreement ('DA') with North Hertfordshire District Council ("NHDC"). Once the Project is complete, in accordance with the DA, HTH will take a 125 year lease from NHDC and concurrently will transfer the freehold interest of 14 & 15 Brand Street to a trust run by NHDC. HTH is providing in excess of £1m to the funding of the Project.

Your firm was appointed by NHDC as the Project architects charged with responsibility for managing the Project through to completion of the works.

You hold yourselves out as having considerable experience working with listed buildings and being sympathetic to the architectural heritage of buildings; indeed your website states "We listen, we think, we do".

NHDC and you as architects for the Project, are responsible for ensuring that all necessary consents relating to works are obtained in a timely fashion as required by the Project timeline. It recently came to our attention that you and NHDC had failed to obtain the requisite consents including Listed Building Consents (LBCs). HTH was surprised that many months after the commencement of the Project, your firm has only recently made the formal application to NHDC as the Local Planning Authority ("LPA") for the required LBCs. A copy of the Design & Access Statement incorporating the NPPF Justification Statement (the "Design & Access Statement") is enclosed for convenience.

You will note the Design & Access Statement states:

(a) "This report has been prepared to summarise and describe the design of the proposed services-installation which have been agreed following extensive internal consultations with the Local Authority and Hitchin Town Hall Ltd – who will jointly manage the facility; as well as the design team and key stakeholders. Detailed design follows work on site to further develop the schematic design."

(b) "This report has been prepared by Buttress, conservation architects and has been developed in conjunction with the rest of the design team to ensure a coordinated and sympathetic appropriate response to the brief has been achieved."



We wish to record formally our objection to the statements highlighted above as follows:

- The Statement contained in (a) is totally inaccurate; at no stage was HTH consulted.
- In relation to (b). HTH has not been involved in the design work referenced in the Design & Access Statement; indeed had HTH been so involved it would have strongly objected to all the work which impinges on the architectural integrity of this listed building.
- The Design & Access Statement, has misrepresented the facts and implicated HTH's participation in your failures, where there has been no such involvement.

The Project works have proceeded without the consultation process stipulated in the DA, resulting in changes that will impact the usage and hence the HTH business model which has now been seriously compromised.

The Design & Access Statement, which is a public document, was presented to HTH as a fait accompli nine days ago and without the right of review; only yesterday were the up-to-date drawings received. We are also surprised that your firm has permitted such a poorly worded document to be published.

HTH is a registered charity and a company limited by guarantee; we represent the Community Groups and residents of Hitchin. The reputation of HTH is being compromised through your action and misrepresentation. Needless to say we will be objecting most strongly to the LPA.

As a matter of urgency HTH requires that Buttress:

- Immediate withdrawal of the inaccurate Design & Access Statement.
- Should it be resubmitted then all references to HTH, must be removed.
- Issue a public apology to HTH in the local press for the inaccurate statements – the wording of such apology to be agreed in advance with HTH.

We look forward to a response by return confirming that you have taken the actions set out above. Please note that we will be writing separately to NHDC regarding the numerous failings on this Project.

In the meantime we reserve all our rights in this matter.

Yours sincerely

Stephen Pike
Chairman & Trustee

Exhibit 15

MEMO TO D SCHOLES RE LISTED BUILDING APPLICATION

Memorandum

To: David Scholes, CEO - NHDC
From: Trustees/Directors of Hitchin Town Hall Ltd
Date: 24/06/2014
Re: Project Board Meeting 18th June 2014

Following the last Project Board meeting on Wednesday the trustees/directors wish to make a few points on behalf of HTH Ltd and the Community Groups whom we represent.

- Under item 4 of the PB agenda was "Discharge of Planning Conditions Update" referencing the Hitchin Town Hall Design & Access Statement Incorporating the NPPF Justification Statement dated 12 June 2014.
- HTH Ltd wish to make it absolutely clear that in attending this meeting it does not accept any of the explanations set out therein.
- The LBC 63 page document was presented as a fait accompli and HTH has had no opportunity to make comment, indeed the speed of presentation makes for a very unprofessional, shortly to be public, document.
- HTH is still awaiting Drawings & Plans that have been submitted to NHDC as the LPA. Buttress offered to send these direct to HTH but that was refused and instead they are being routed through NHDC - this has already caused delay and HTH now require copies as a matter of urgency. [We understand that these were posted to our registered office yesterday]
- The LBC 63 page document specifically states:

"This report has been prepared to summarise and describe the design of the proposed services installation which have been agreed following extensive internal consultations with the Local Authority and Hitchin Town Hall Ltd - who will jointly manage the facility; as well as the design team and key stakeholders. Detailed design follows work on site to further develop the schematic design."

This statement is totally inaccurate and HTH wish it to be removed; it is libellous.

- Buttress will be advised that reference to HTH compliance with this document is not acceptable. In addition HTH requests that any reference which could be inferred as HTH being complicit with this document be removed or a statement made at the beginning to this effect.

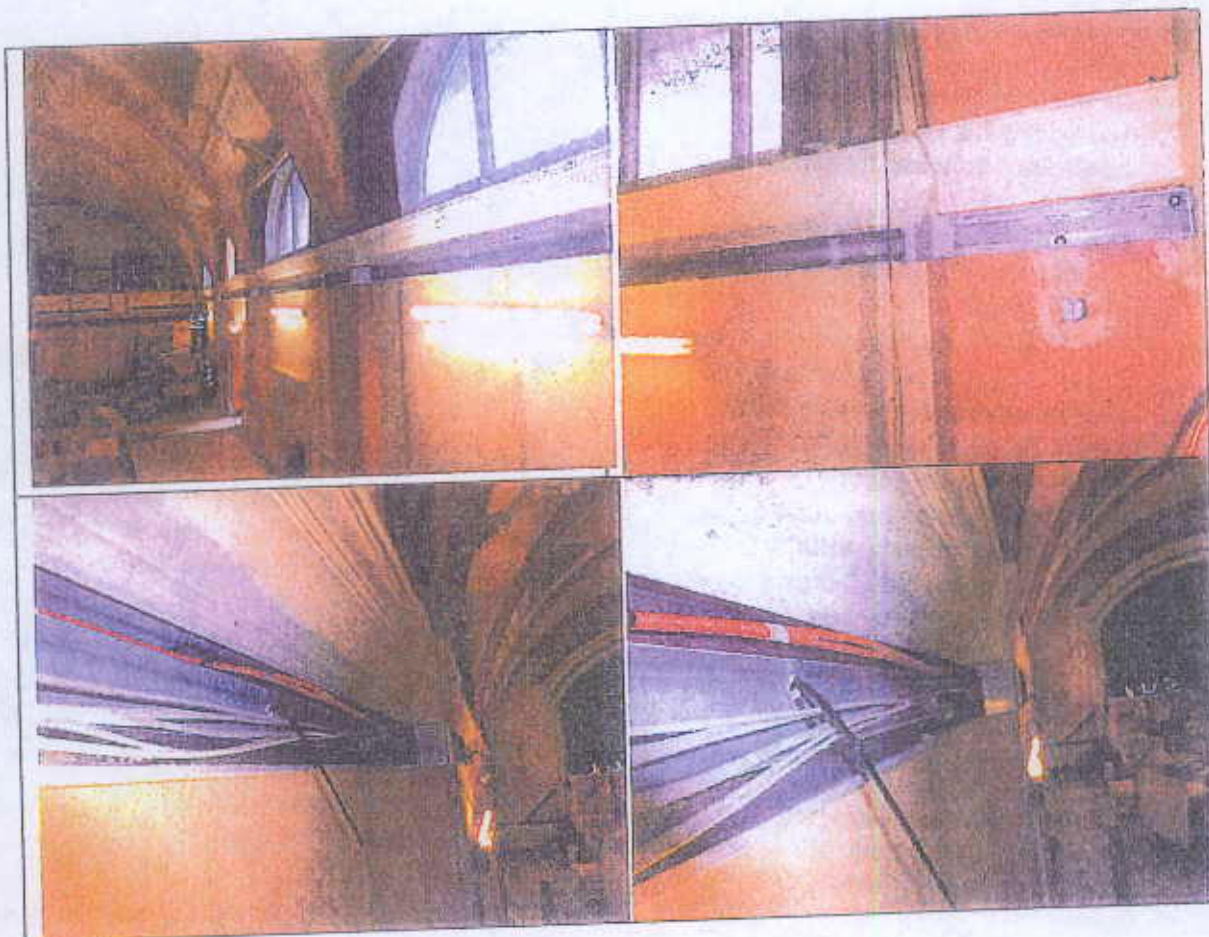
Whilst other aspects were discussed these are the main points HTH wish to convey to you.

When visiting the site on Thursday 19th June 2014, it was noticed that large ducting has been secured to the Main Hall wall on the whole length of the Grammar School Walk side; this is for electrical wiring.

HTH have never been consulted on this ducting which is intrusive and abuts the detailed cornicing.

We understand that samples of the ducting were sent to Buttress for consideration but, as stated, HTH were never consulted as to the routing nor given an opportunity to question the proposal, and now retrospective LBC is being requested within the 'justification' statement.

HTH find this approach to be totally unacceptable.



--- End ---

Exhibit 16

FORMAL LETTER TO PLANNING AUTHORITY OBJECTING TO
THE LISTED BUILDING RETROSPECTIVE APPLICATION



HITCHIN TOWN HALL LTD

Registered Charity No: 1145921

t: +44 (0) 1462 441170
m: +44 (0) 7973 818266
e: info@hitchintownhall.co.uk
w: www.hitchintownhall.co.uk

NHDC
Planning Department.
PO Box 480, M33 0DE

30th June 2014

Dear Sirs

Planning Application ref. 14/01633/1LB
Town Hall, Brand Street, Hitchin

As stakeholders in the development it is with some regret that we find it necessary to object to this application on the following grounds:

1. Application Form

- a. The applicant is incorrectly listed as Neal Charlton of Buttress when it should be NHDC. It is clearly not possible for the same party to be both the applicant and the agent.
- b. Item 3 states that work has not started, when clearly it has.
- c. Item 7 states that local community consultation has taken place. We do not believe this has occurred and HTH have certainly not been consulted.
- d. Item 11 confirms as YES to the question 'Will there be stripping out of any internal wall, ceiling or floor finishes (e.g. Plaster, floorboards)?' It is clear from inspection on site that this work has already taken place.

2. Design & Access Statement, incorporating the NPFF justification statement

- a. The following statements made in this document are *untrue*:
 - i. Page 4: 'This report has been prepared to summarise and describe the design of the proposed services installation which have been agreed following extensive internal consultation with the Local Authority and Hitchin Town Hall Ltd – who will jointly manage the facility; as well as the design team and key stakeholders. Detailed design follows work on site to further develop the schematic design.'
 - ii. Page 5: 'This report has been prepared by Buttress, conservation architects and has been developed in conjunction with the rest of the design team to ensure a coordinated and sympathetic appropriate response to the brief has been achieved.'
 - iii. Page 28: 'It is considered by the design team and the client group that the current design fits these parameters, within the restrictions of the funding currently available.'

Arbitrary budget limits cannot be a consideration when carrying out alterations to a Listed Building; if the budget does not allow them to be done properly then they should not be done.



- iv. Page 32: *'Throughout the development of the conceptual design and the detailed design of the services installation a series of consultations were undertaken to ensure that the development of the buildings would meet the demands of future users and the requirements of the key Stakeholders.'*

and:

'Throughout the development of the design there has been regular and on going consultation with key stakeholders. These stakeholders have included Representatives of Hitchin Town Hall Ltd.'

- v. Page 32 also states that *'Pre -application Consultation has been undertaken with the Planning Department on 11th June (the application states 10th June) with Mary Caldwell - Senior Planning Officer and Tom Rea - Planning Officer. This followed meetings on site with both Tom Rea and Mark Simmons - conservation officer, to consider the scope of works.'*

As substantial elements of the services installation had by this time been carried out at the time of the inspection, we find it impossible to understand how this can be considered as pre-consultation when in fact a retrospective approval is being sought.

- vi. Page 48: Electrical distribution to the Mountford Hall

The report states that *'Whilst it was always our intention to fully conceal the electrical distribution, it has become impossible to distribute electrical services along the internal wall facing grammar school walk.'*

If it was always the intention to conceal this installation we are aware of no change to make this now impossible. At no time have HTH been consulted in this respect or asked to consider alternative routes. Had we been asked we would not have agreed the installation of the trunking below the cornice now installed.

The trunking (not conduit) is not identified on Harris Electrical drawings 2686 - 003 or 005.

- vii. Page 55: *'The submission forms a comprehensive scheme which has integrated input from the whole design team ensuring a robust and detailed, sympathetic design philosophy.'*

HTH have continuously been ignored, both throughout the design process and since work commenced, and object to it being suggested that this application is made with their complete support.

b. Other issues:

- i. Heating installation to the Lucas Room

It is agreed that the existing (now removed) domestic radiators and insulated heating pipework has a detrimental effect on the room as a whole.

However the proposal to install modern radiators is not agreed. The Lucas Room is one of the architectural gems in the building with ornate ceiling mouldings, cornices and detailing. Modern radiators will clash with this period presentation and we wish to see original re-claimed 'hospital radiators' or similar installed to restore the original overall effect.

- ii. Services installation to the entrance foyer

The plethora of pipework and services now installed in this area is testimony to the lack of effort to look at alternative routes and or locations for this the first area seen by visitors to the Hall.



Buttress propose to hide these together with existing cornices, with dropped bulkheads to both sides and to the rear of this ceiling. The bulkheads are proposed to be plain square edged. This will leave this reception area ceiling devoid of any architectural detailing and purely utilitarian in presentation unlike that provided in the original.

The inclusion of an overhead warm air curtain across the inside of the glazed feature window over the main entrance doors has never been discussed with HTH. We are convinced that other solutions are available that would allow the feature window to remain without being obscured and masked as is proposed. For our part, we would prefer that there be no heating rather than have this crude device.

Flow meters can clearly be sited away from key formal areas and this is further evidence of the lack of any attempt to consider this installation until after it was installed.

3. Architectural Drawings

Drawings ref 7198 (06) 001 and 002 (both dated November 2013) are the only architectural drawings submitted other than location plans.

- a. Drawing 002 identifies in Section CC notes referring to the boxing to perimeter services in the reception area and the provision of an overhead warm air curtain. The drawing indicates bulkheads both sides of the reception.

Section DD through the Reception area does not show the side of the bulkhead on the left which would be seen in elevation nor does it show the bulkhead to the rear of the ceiling in section which we understand is proposed.

- b. Drawings 001 and 002 make no reference to the other rooms where existing ceilings have been removed, amended or as we understand to be covered by suspended ceilings.

The Justification Statement is a very poor piece of work with some parts being unintelligible. We believe that drawings of all of the boxings etc that are required to conceal the various services need to be provided, together with details of the repairs required. There is insufficient detail for this application to be determined.

In conclusion, we are unable to understand why, as the services installation is of such significance in respect of its effect on the existing fabric and finishes, there was not a fully detailed Listed Building application prior to the commencement of the work.

Much of the installation has already been installed and yet this application is made on the premise that approval is sought for the works prior to them being carried out. It is our understanding that retrospective approvals for works already undertaken in a Listed Building is not provided for under the Listed Building legislation. Indeed, the making of this application appears to be an admission that a breach of the Act has taken place.

Hitchin Town Hall Ltd has no alternative but to object to this application in full.

Yours faithfully

Stephen Pike
Chairman, Hitchin Town Hall Ltd

Exhibit 17

LETTER OF RESIGNATION AS A TRUSTEE/DIRECTOR OF HTH

PRIVATE & CONFIDENTIAL

t: +44 (0) 1462 441170

**Thurlstone House
26 The Avenue
Hitchin SG4 9RJ**

**Stephen Pike
Chairman/Trustee
Hitchin Town Hall Ltd
2 Croft Chambers
11 Bancroft
Hitchin
Herts SG5 1JQ**

November 15th 2014

Dear Stephen

HITCHIN TOWN HALL & NORTH HERTS MUSEUM PROJECT

After a long and tortuous experience with this project, it is with great regret that I tender my resignation.

You may recall that I wanted to resign in March 2013, over 18 months ago, but was persuaded to remain.

A copy of my drafted resignation at that date is attached for the file and as you are aware, since that time, matters have gone from bad to worse. NHDC are, in my opinion, not a fit and proper organisation to work 'in partnership' with a community project.

I fear that it is only a matter of weeks before this project is at an end with the cost to the taxpayer of £1 million and feel I can best serve the community by resigning now.

Kindest personal regards to you and the team.

Yours sincerely,

David Leal-Bennett

cc John Hartshorne - Company Secretary, Hitchin Town Hall Ltd
Brent Smith - Director/Trustee, Hitchin Town Hall Ltd
Rosemary Read - Director/Trustee, Hitchin Town Hall Ltd

Exhibit 18

ATTEMPT AT MEDIATION

EMAIL EXCHANGE WITH CLLR NEEDHAM

23 February 2015

My comments in RED

From: Cllr Lynda Needham [mailto:Lynda.Needham@north-herts.gov.uk]
Sent: 11 February 2015 17:54
To: 'David Leal-Bennett'
Cc: 'Stephen Pike'; David Scholes
Subject: RE: HTHLtd TRIPARTITE MEETING

Dear David,

I will take your points as in your email. I do not understand the first paragraph, what issues are you referring to.

The 'issues' to which I referred are the whole process of mediation and the approach that officers are recommending. To my mind this demonstrates a total lack of understanding of the mediation process. To state the following is, frankly, ludicrous:

"to forward to us the main components of any proposal that HTHLtd wish to promote in order that we can consider the situation."

I have already mentioned, how mediation works. HTH could equally request that NHDC forward their proposals! The whole point of mediation is that the mediator is the conduit; it is not a case of let us see what you want and we will decide if we want to meet.

I repeat that in promoting such an approach you and officers do not understand the process or if you do, then NHDC is time wasting.

Considering NHDC has offered to pay the bill, I feel that our suggestions made on the 19th January and 30th January that we approach the Chartered Institute of Arbitrators was fair to all, as whoever comes from this contact is neither through NHDC, HTHLtd or SIB. I also refute your suggestion that we have made no effort to secure a Mediator. If there had been a positive response to my email of the 19th Jan we would be much further along towards a meeting.

You did not need a positive response, the offer was made by HTH and there was absolutely no reason why you could not have made initial approaches to the CIA, that would not have incurred costs and in doing so you might have clarified the process, in fact you seemed to go out of your way to attempt to sideline my attempt to promote a meeting by insisting that you responded direct to HTH, if nothing else this was extremely discourteous. I did not have a "positive" response, but I approached Keating Chambers, discussed the big picture with them and they were standing by ready to be instructed. You chose not to proceed which delayed matters further, NHDC seem to be incapable of being proactive and reverted to a process approach.

I am now aware of which Cabinet Member recommended Keating Chambers. However, I see this makes the suggestion of Keating

Chambers even less independent from NHDC, as it was recommended through two councillors.

That is your view, I personally do not agree but I am not that concerned.

I have not missed the point completely that it is mediation and not arbitration. The Chartered Institute of Arbitrators have a Mediation Division.

This is accepted but the word "arbitration" has been used many times in email exchanges by NHDC, hence the comment.

Regarding paragraph 7, this meeting has been requested by HTHLtd and both myself, NHDC and SIB are in full agreement for it to go ahead, but there must be an outcome that is desired and not just a wish to "mend fences".

Of course, I think this situation is well beyond 'fence mending' to my mind this is pure commerciality on all sides.

Therefore to have guidance on its main component prior to a meeting I would have thought both sensible and essential.

I repeat what I stated above and it is neither sensible nor essential. You are in effect looking to counter any argument that may be made by HTH prior to any mediation, that is just not how it works. Get the decision makers to the meeting and see if a deal can be agreed. If not then it's a £1m cost to the taxpayer.

There are no delaying tactics on my part and I have every wish to proceed. Well then just set a date and stop asking for pre-agenda items. We are currently awaiting Stephen to reply on behalf of HTHLtd with agreement for NHDC to approach the Chartered Institute of Arbitrators, so that we can move this along swiftly.

You have had a positive response, so just get on with it and no more procrastination. I started this process in early January and we are now almost in March!

--- End ---

Previous email trail

From: David Leal-Bennett [mailto: [REDACTED]]
Sent: 09 February 2015 14:35
To: Cllr Lynda Needham
Cc: 'Stephen Pike'; David Scholes
Subject: RE: HTHLtd TRIPARTITE MEETING

Lynda

Thank you for your response which has clearly been written following discussion with officers, who do not appear to be well versed in such issues.

I take great exception to your implication that I have in some way managed to procure a mediator who could be seen as not being independent.

Keating Chambers was actually proposed by one of your own Cabinet members after their consultation with a QC, and is totally independent, the only role I have played has been to endeavour to get the parties together. You have also missed the point completely, in that it is mediation and not arbitration that is being pursued.

NHDC have had a considerable amount of time to arrange for someone to be appointed but have done little to progress, you have not even provided a nominee. It is only now that are you are suggesting that officers pursue this route, and such a delay is unacceptable.

For my part I emailed you on 15th January 2015 having done considerable groundwork, and then chased you again of 4th February 2015, I have given you full details of the proposed individual together with her detailed experience with such matters.

http://www.keatingchambers.co.uk/profiles/barristers/Elizabeth_Repper.aspx

It is also clear that there is a complete misunderstanding of how such a processes works. It is not for HTH to provide NHDC with 'its main component'! This would only give NHDC insight on proposals that HTH may wish to bring to the table, it is not for pre-debate. I am afraid that this is not how mediation works and any professional adviser would counsel you that is the case.

Once someone is appointed, it is for both parties to set out their position, usually in writing, to the agreed mediator. The mediator would then need time to consider the issues and then would call the parties together.

I am afraid that what you are suggesting will not work and I am concerned that these are delaying tactics and can only assume that you have another agenda.

Incidentally, if you take your suggested route then HTH and SIB will wish to know who is being proposed, their experience and qualifications, again more delay.

I am deeply concerned that you are not prepared to proceed with the suggested Independent mediator since there could be immediate progress in taking that route.

David

23 February 2015

From: Cllr Lynda Needham [<mailto:Lynda.Needham@north-herts.gov.uk>]
Sent: 06 February 2015 12:02
To: David Leal-Bennett [REDACTED]
Cc: 'Stephen Pike'; David Scholes
Subject: HTHLtd TRIPARTITE MEETING

Dear David,

Thank you for the recent emails in respect of the independently chaired meeting. It seems that we all agree that for any meeting to be productive the Chair needs to be entirely independent with no local connection. Any potential Chair promoted by any of the parties cannot be seen to be independent. Given the contractual relationship it is appropriate that we deal with the Chairman/Directors of Hitchin Town Hall Ltd rather than yourself, David.

It appears that the Council will have no alternative but to pay for the Chair/Mediator given HTHLtd's lack of finance. In that circumstance we would insist that the Chartered Institute of Arbitrators appoint the person, so that the individual is independent of, and can be seen to be independent of, all the parties. I will ask officers to contact Stephen to forward to us the main components of any proposal that HTHLtd wish to promote in order that we can consider the situation. I will also request that they seek an indication of the dates that HTHLtd Directors are available for such meeting, and any views on venues, so that the Independent Chair can make the necessary arrangements once appointed through the Chartered Institute of Arbitrators.

Regards
Lynda

--

Exhibit 19

LETTER TO FROM THE RT HON ERIC PICKLES MP, SECRETARY OF STATE
FOR COMMUNITIES AND LOCAL GOVERNMENT, TO THE RT HON PETER
LILLEY MP - 10TH MARCH 2015

LOCAL PRESS COMMENT



Department for
Communities and
Local Government

The Rt Hon Peter Lilley MP
House of Commons
London
SW1A 0AA

The Rt Hon Eric Pickles MP
Secretary of State for Communities and Local
Government

Department for Communities and Local
Government
Fry Building
2 Marsham Street
London
SW1P 4DF

Tel: 0303 444 3450
E-Mail: eric.pickles@communities.gsi.gov.uk

www.communities.gov.uk

Our ref: 839968

10 MAR 2015

Dear Peter

Thank you for your e-mail of the 3 March regarding the conduct of North Hertfordshire District Council.

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 requires a disclosable pecuniary interest to be declared in cases where "Any employment, office, trade, profession or vocation carried **on for profit or gain**" (emphasis added). It also applies where the councillor has a beneficial interest in the securities of a local body.

If a councillor stops having such a beneficial interest, then by definition, it is not a disclosable pecuniary interest. I would note that the Localism Act 2011 has abolished the Standards Board regime, and has also clarified the position with regard to pre-determination and bias. Section 25 clarifies that a councillor is not to be regarded as being unable to act fairly or without bias if they participate in a decision on a matter simply because they have previously expressed a view or interest, or campaigned on it. The stated intent is that councillors may campaign and represent their constituents – and then speak and vote on those issues – without fear of breaking the rules on pre-determination.

Of course, at the decision-making meeting, councillors should carefully consider all the evidence that is put before them and must be prepared to modify or change their initial view in the light of the arguments and evidence presented. Then they must make their final decision at the meeting with an open mind based on all the evidence. Such a fair hearing is particularly important on quasi-judicial matters, like planning or licensing.

Council monitoring officers can offer advice to councillors. But the final decision about whether it is right to participate in discussion or voting remains one for elected members. Councillors should take decisions with full consciousness of the consequences of their actions. The goal of the Localism Act was to inject some common sense whilst allowing for genuine debate, freedom of speech and democratic representation. It would appear that such common sense may be lacking in the case you cite.

Yours ever



THE RT HON ERIC PICKLES MP

Pickles says council may have lacked common sense in deciding on ban

Eric weighs in to rumpus on Town Hall debate ban

By Layla Younis

Continued from page 14

A heavyweight politician has joined the argument on a controversial conflict of interest relating to the continuing Hinchin Town Hall renovation race.

Secretary of state for communities and local government Eric Pickles has waded into the row on whether Councillor David Lead-Bennett should have been excluded from a debate on the future of the 17th-century project.

Councillor Lead-Bennett was advised when he joined the council his position as a trustee and partner with Hinchin Town Hall Ltd, the group formed to run the new look centre since the transformation was complete, constituted an interest, meaning he should not enter debates on the issue.

But although he later stepped back from the role, the North Herts District Council monitoring officer subsequently ruled the council was in breach of its own code of conduct as a special council meeting.

In a letter sent to Hinchin MP Peter Liddle, Mr Pickles stated: "If a councillor stops having a beneficial inter-

est, then by definition it is not a dis-posable interest."

Councillors may campaign and represent their constituents - and speak and vote on those issues without fear of breaching the rules on pre-determination. Council must not offer advice to councillors.

"The goal of the Localism Act was to inject some common sense while allowing for genuine debate freedom of speech and democratic representation."

"It would appear such common sense may be lacking in this case."

Mr Liddle told the Council: "I have been puzzled by the way the council's monitoring officer has interpreted the line about whether or not a councillor can participate in debate about the town hall."

Councillor Lead-Bennett added: "The monitoring officer's advice to councillors, it's just that advice. I need to know the legal basis of barring me from meetings."

"I've also written to the leader of the Conservative group, and expressed in the strongest terms my extreme concern at the misinformation given which was used to justify my exclusion."

"This matter is not going to rest here. I want this sorted."



■ Eric Pickles.

est, then by definition it is not a dis-posable interest."

Section 22 of the Localism Act states that a councillor is not to be regarded as being unable to act fairly or without bias if they participate in a decision on a matter simply because they have previously expressed a view or interest, or

Exhibit 20

BRIEFING NOTE FOR THE RT HON PETER LILLEY MP - 3RD MARCH 2015

North Hertfordshire District Council's conduct towards a Conservative Councillor

Cllr David Leal-Bennett was elected on 4th May 2012, for Hitchin Highbury Ward.

At that time he was also a director/trustees of Hitchin Town Hall Ltd ("HTH") a not for profit company limited by guarantee (No: 07974116), which is also a registered charity (No: 1148921). The company was set up to represent local Community Groups to manage and operate Hitchin Town Hall following a development to expand the site and add a museum complex at a cost of some £4.3m, the ("Project").

HTH signed a development Agreement with NHDC and in exchange for providing £1m (including two properties) and HTH would receive a 125 year lease on the Town Hall.

Under the Localism Act NHDC all elected members are required to disclose their interest, however NHDC do not differentiate between a Disclosable Pecuniary Interest ("DPI") and an ordinary non pecuniary interest as defined in the Act when requesting members to complete their 'Register of Interests'.

Under NHDC code of conduct, if an elected member has a DPI they are required to disclose the interest and leave the room, they may not partake in any debate or vote.

Upon election Cllr Leal-Bennett was advised that he had to include HTH in his list of registered interest as a DPI, as a new member he complied.

Since Cllr Leal-Bennett has **never** received any form of income paid or otherwise he considered that he had been poorly advised and removed reference to HTH from his Register of Interests. He has been consistent throughout that he has never had a DPI.

Since removing HTH from the Register of Interest NHDC has conducted a continual stream of actions, all of which have attempted to intimidate Cllr Leal-Bennett so that he does not partake in any form of debate and on every occasion, until very recently Cllr Leal-Bennett has left the chamber, albeit extremely reluctantly.

Following the removal of HTH from the Register of Interest NHDC reported Cllr Leal-Bennett to the police claiming, that in removal he was not complying he had committed a Criminal Offence, NHDC also briefed a QC at taxpayers' expense to justify their action stating that by virtue of the Development Agreement that there was a DPI. Cllr Leal-Bennett has been interviewed by the police who have stated that:

"In the absence of some judicial interpretation, we were not prepared to bring charges and expend public money to ascertain this position, particularly as the offence is triable only at a Magistrate's court, which due to its position within the legal system is incapable of making a binding legal precedent for future cases."

In November 2014 Cllr Leal-Bennett resigned as a director/trustee but the Monitoring Officer ("MO") of NHDC still insists that he has an 'Interest'.

On 18th December 2014 at an Overview & Scrutiny Committee meeting the MO used a 'Declarable Interest' as the reason for exclusion stating:

I have provided advice to Cllr Leal-Bennett that due to his long standing relationship with HTH he would be considered to have a "close association"

My advice is that the test in 7.3 would be met; due to Cllr Leal-Bennett's long standing role on the project with HTHL and therefore the requirements of the Code of Conduct are that whilst he can speak as a member of the public and listen to any other public speeches, he must leave the room prior to the item being presented and debated.

Minute stated : The Monitoring Officer confirmed that in his view Councillor Leal-Bennett did not have a Disclosable Interest, but that he must consider the effect of having a Declarable Interest.

On 12th February 2015 at a Full Council there was a report on the Project to request additional funding and to explain the delay; currently the Project is 6 months late and over original budget by some £750,000. The MO stated because there was a 'financial' decision that Cllr Leal-Bennett must leave the chamber. Cllr Leal-Bennett thanked the MO for his advice but stated that he had his own advice from the Conservative Councillors' Association and that he did not have an interest and would remain in the chamber. At which point the meeting was suspended and, after some discussion, the item was deferred. It is clear that NHDC do not wish Cllr Leal-Bennett to make any comment

On 10th March 2015 there will be an extraordinary Full Council meeting to debate the Project's progress and Cllr Leal-Bennett wishes to attend but fears that NHDC will used various tactics including removing him by force if necessary; he is extremely concerned and is seeking advice and assistance to ensure that the democratic process is permitted to take place.

03-Mar-15

Note: HTH served notice of breach of contract under the DA and the parties are in dispute. Since December 2014 Cllr Leal-Bennett has been endeavouring to get the parties to mediate since there is an additional £1m of taxpayers' money at risk. A few days ago NHDC finally agreed to a joint mediation process.

Exhibit 21

HISTORY OF INTEREST WITH HTH AND DPI CHALLENGE - FROM MAY 2012

I KEEP six honest serving-men
(They taught me all I knew);
Their names are
What and Why and When
And How and Where and Who.

Rudyard Kipling

As a councillor I use this short poem as a basis to ask questions and as a sanity check to clarify often ambiguous officer reports.

May 2012

Cllr Leal-Bennett was elected as Councillor for Hitchin Highbury Ward

When he became a Conservative councillor in May 2011 he was advised, by the then lawyer at NHDC, that he was required to fill in a form as he had a Disclosable Pecuniary Interest ("DPI") and 'needed to declare this along his other directorships and property ownership'.

Not being fully versed in the legislation, he complied and completed a form, however when the Town Hall was discussed at Full Council he was further advised:

1. You must declare your interest ("I have a Disclosable Pecuniary Interest as a Director of HTH") and withdraw from the room under the Council's Code of Conduct. Please note there is no discretion on this, it is an absolute requirement.

2. You must not participate on the item in any way (ie you must not speak to the item before withdrawing). To do so would potentially be a criminal offence under s.31(4) and s.34 of the Localism Act

Since he has **never** received any form of income paid or otherwise he considered that he had been poorly advised and removed reference to HTH from the Register of Interests. He has been consistent throughout that he have never had a DPI.

Since removing HTH from the Register of Interest NHDC has conducted a continual stream of actions, all of which have attempted to intimidate Cllr Leal-Bennett so that he does not partake in any form of debate and on every occasion, until very recently Cllr Leal-Bennett has left the chamber, albeit extremely reluctantly.

Following the removal of HTH from the Register of Interest, NHDC reported Cllr Leal-Bennett to the police claiming, that in removal he was not complying with the Localism act and **he had committed a Criminal Offence**, NHDC also briefed a QC at taxpayers' expense to justify their action stating that by virtue of the Development Agreement that there was a DPI. Cllr Leal-Bennett has been interviewed by the police who have stated that:

"In the absence of some judicial interpretation, we were not prepared to bring charges and expend public money to ascertain this position, particularly as the offence is triable only at a Magistrate's court, which due to its position within the legal system is incapable of making a binding legal precedent for future cases."

In November 2014 Cllr Leal-Bennett resigned as a director/trustee but the Monitoring Officer ("MO") of NHDC still insists that he has an 'Interest', now 'Declarable'.

On 18th December 2014 at an Overview & Scrutiny Committee meeting the MO used a 'Declarable Interest' as the reason for exclusion stating:

I have provided advice to Cllr Leal-Bennett that due to his long standing relationship with HTH he would be considered to have a "close association". My advice is that the test in 7.3 would be met, due to Cllr Leal-Bennett's long standing role on the project with HTHL and therefore the requirements of the Code of Conduct are that whilst he can speak as a member of the public and listen to any other public speeches, he must leave the room prior to the item being presented and debated.

Minute stated : The Monitoring Officer confirmed that in his view Councillor Leal-Bennett did not have a Disclosable Interest, but that he must consider the effect of having a Declarable Interest.

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Council monitoring officers can offer advice to councillors. But the final decision about whether it is right to participate in discussion or voting remains one for elected members. Councillors should take decisions with full consciousness of the consequences of their actions. The goal of the Localism Act was to inject some common sense whilst allowing for genuine debate, freedom of speech and democratic representation. It would appear that such common sense may be lacking in the case you cite.

John Eve



THE RT HON ERIC PICKLES MP

Confidential

Notes:

Hansard

16-Jan-13, Minister's comment "We seem to be getting into a very dangerous state of affairs, where monitoring officers, perhaps through an abundance of caution, I put that charitably, come up with an interpretation of the law that clearly inhibits councillors from expressing a view."

Conservative Councillors' Association

17-Dec-14 - CCA view is that there can be no Declarable Interest because you are no longer a Director (We did not accept that even that created an interest).

4.6 (c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest;

It cannot apply because there is no interest for the public to judge.

Localism Act

Contracts - Any contract which is made between the relevant person (or a body in which the relevant person has a **beneficial interest**) and the relevant authority.

Black's Law Dictionary defines **beneficial interest** as "Profit, benefit or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control."

Confidential

Localism Act

28 Codes of Conduct

28 (2) A relevant authority must secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of—

- (a) pecuniary interests, and
- (b) interests other than pecuniary interests

31 Pecuniary interests in matters considered at meetings or by a single member

(1) Subsections (2) to (4) apply if a member or co-opted member of a relevant authority—

- (a) is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority,
- (b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and
- (c) is aware that the condition in paragraph (b) is met.

(2) If the interest is not entered in the authority's register, the member or co-opted member must disclose the interest to the meeting, but this is subject to section 32(3).

(3) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member or co-opted member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure.

(4) The member or co-opted member may not—

- (a) participate, or participate further, in any discussion of the matter at the meeting, or
 - (b) participate in any vote, or further vote, taken on the matter at the meeting,
- but this is subject to section 33.

(5) In the case of a relevant authority to which Part 1A of the Local Government Act 2000 applies and which is operating executive arrangements, the reference in subsection (1)(a) to a committee of the authority includes a reference to the authority's executive and a reference to a committee of the executive.

(6) Subsections (7) and (8) apply if—

- (a) a function of a relevant authority may be discharged by a member of the authority acting alone,
- (b) the member has a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, by the member in the course of discharging that function, and
- (c) the member is aware that the condition in paragraph (b) is met.

(7) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date when the member becomes aware that the condition in subsection (6)(b) is met in relation to the matter.

(8) The member must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member).

Declarable Interests

Page 166 of Code of Conduct

4.6 You have a Declarable Interest in an Item of business of the Council where:

(a) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or your employer or a person or body with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward for which you have been elected or otherwise of the Council's administrative area; or

(b) it relates to or is likely to affect any of the interests listed in the Appendix to this Code in respect of a member of your family (other than covered in the legislation) or your employer or a person or body with whom you have a close association; or

(c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as **so significant that it is likely to prejudice your judgement of the public interest**; or

and that interest is not a Disclosable Pecuniary Interest.

MO Comment: The effect of this is set out at 7.3, 7.4 and 7.5 of the Code of Conduct. Again I have set those out in full below. My advice is that the test in 7.3 would be met, due to your long standing role on the project with HTHL and therefore whilst you can speak as a member of the public and listen to any other public speeches, you must leave the room prior to the item being presented and debated.

Page 168 of Code of Conduct

7.3 If you are present at a meeting of the council and you have a Declarable Interest relating to any business which a member of the public with knowledge of the relevant facts would **reasonably regard as so significant that it is likely to prejudice your judgement of the public interest** you must not participate in the discussion or vote on the item, although you may speak as a member of the public.

7.4 If you have a Disclosable Pecuniary Interest, or a Declarable Interest which is **so significant** that you must not participate, you must leave the room or chamber where the meeting is being held unless you have received a dispensation from the Monitoring Officer.

7.5 If you are leaving the room or chamber in accordance with paragraph 7.4 you may listen to any speeches from the public but must leave prior to the item being presented or in any other case, whenever it becomes apparent that that business is being considered at that meeting.

Exhibit 22

EMAIL EXCHANGE WITH THE RT HON PETER LILLEY MP - 17 DECEMBER
2014

CONFIDENTIAL - LEGAL EMAIL EXCHANGES

From: LILLEY, Peter [mailto:peter.lilley.mp@parliament.uk]
Sent: 17 December 2014 16:01
To: David Leal-Bennett
Subject: RE: Hitchin Town Hall - Directorships

Dear David,

They seem desperate to stop anyone who has relevant knowledge from participating even in discussion on a subject!

By definition you no longer have a close association to HTH Ltd given that you are no longer a Director.

If their interpretation of the rules – applying the close association rule to past associations even though the rule is written in the present tense – were applied generally it would exclude lots of Councillors with relevant knowledge from lots of debates e.g. former pupils and teachers of a school would not be able to participate in matters affecting that school; former members or officers of sports clubs ditto; former owners of businesses re parking/planning issues affecting local business etc.

However, it will be virtually impossible to get any minister to opine on their (mis)interpretation of the rules in time to be any use to you.

I think if I were in your shoes I would state at the beginning of any session that you acknowledge that you previously had a relevant interest but no longer do have a close association so you do not accept the advice of the officials and propose therefore to participate in the debate – (but perhaps not the vote?).

Best of luck

Peter

From: David Leal-Bennett [mailto:]
Sent: 17 December 2014 10:17
To: LILLEY, Peter
Cc: percivalec@parliament.uk
Subject: Hitchin Town Hall - Directorships

Dear Peter

I have resigned as a director of HTH so that I may partake in the debate on Thursday (Scrutiny of which I am a member) specifically Part2 where the papers paint a derogatory picture of HTH Ltd.

CONFIDENTIAL - LEGAL EMAIL EXCHANGES

Strangely the special Scrutiny meeting is to update all members of the council who have been invited to attend.

Please see the advice I am now being given, which basically is another gagging order.

I would appreciate your thoughts and those of the minister if at all possible.

Kind regards

David

From: Anthony Roche [mailto:Anthony.Roche@north-herts.gov.uk]
Sent: 16 December 2014 19:18
To: David Leal-Bennett
Cc: David Scholes
Subject: RE: Directorships

Cllr Leal-Bennett

Thank you for your email.

I am aware of the correspondence you had with Katie on the issue of your form and it is precisely because of that I was seeking that you complete the form afresh. Given the (now) historic dispute it is beneficial to all that we have a new form that provides up to date information and draws a line under the previous correspondence. I would have no objection to you sending me the updated form and stating that by doing so you are not conceding the point as to whether or not in your view you previously had a DPI.

With regard to your directorship of HTHL I can confirm that I have received proof of your directorship ceasing.

In my email I also offered to provide advice on your position in respect of Hitchin Town Hall matters given your change in circumstances. I note that you have not taken up that offer (although no doubt this is due to the email difficulties to which you refer). Given the subject matter of the Overview and Scrutiny meeting on Thursday it would seem sensible for me to provide that advice.

On the basis that you are no longer a director of HTHL my advice is that you no longer have a DPI (I acknowledge your differing interpretation of the DPI regulations, but that is now a moot point given the directorship has ended). This means that the potential criminal sanctions under the regulations for failure to comply are no longer applicable.

As you know under the Code of Conduct adopted by Full Council on 18 July 2013 we have a second category of interests, Declarable Interests. My advice is that due to your long standing relationship with HTHL you would be considered to have a "close association" with the organisation under 4.6 (a) and/or (b) and that additionally 4.6 (c) applies. I have reproduced in full the relevant section below.

Declarable Interests

4.6 You have a Declarable Interest in an item of business of the Council where:
(a) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or your employer or a person or body with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward for which you have been elected or otherwise of the Council's administrative area; or

CONFIDENTIAL - LEGAL EMAIL EXCHANGES

(b) it relates to or is likely to affect any of the interests listed in the Appendix to this Code in respect of a member of your family (other than covered in the legislation) or your employer or a person or body with whom you have a close association; or

(c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest; or

....

and that interest is not a Disclosable Pecuniary Interest.

The effect of this is set out at 7.3, 7.4 and 7.5 of the Code of Conduct. Again I have set those out in full below. My advice is that the test in 7.3 would be met, due to your long standing role on the project with HTHL and therefore whilst you can speak as a member of the public and listen to any other public speeches, you must leave the room prior to the item being presented and debated.

7.3 If you are present at a meeting of the council and you have a Declarable Interest relating to any business which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest you must not participate in the discussion or vote on the item, although you may speak as a member of the public.

7.4 If you have a Disclosable Pecuniary Interest, or a Declarable Interest which is so significant that you must not participate, you must leave the room or chamber where the meeting is being held unless you have received a dispensation from the Monitoring Officer.

7.5 If you are leaving the room or chamber in accordance with paragraph 7.4 you may listen to any speeches from the public but must leave prior to the item being presented or in any other case, whenever it becomes apparent that that business is being considered at that meeting.

I am of course happy to advise further if that would assist. I am aware you have been in correspondence with David Scholes regarding the HTH project and therefore I have copied him in to this email.

Many thanks

Anthony Roche

From: Anthony Roche [mailto:Anthony.Roche@north-herts.gov.uk]

Sent: 17 December 2014 15:35

To: David Leal-Bennett

Cc: David Scholes

Subject: RE: Directorships

Cllr Leal-Bennett

Thank you for your email and I note your comments.

I would be grateful if you could respond to the first paragraph of my email regarding the declaration of interest form.

With regard to your stated approach to the meeting tomorrow night I will need to consider with the other statutory officers how to protect the Council's position, given the contract dispute with HTHL.

Many thanks

Anthony Roche

CONFIDENTIAL - LEGAL EMAIL EXCHANGES

From: CCA [mailto:CCA@Conservatives.com]
Sent: 17 December 2014 14:01
To: David Leal-Bennett
Cc: dlb@syssol.net
Subject: RE: Advice - URGENT re Hitchin Town Hall

Dear David,
Thank you for your email.

I have asked Alan Mabbutt, Head of Local Government, for advice.

His view is **that there can be no Declarable Interest because you are no longer a Director (We did not accept that even that created an interest).**

4.6 (c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest;

It cannot apply because there is no interest for the public to judge.

As always a councillor has to take the responsibility themselves for declaring interests so our view does not absolve them of that fact.

Best wishes,
Ceri Pring
CCA

From: David Leal-Bennett <david@hitchinconservatives.co.uk>
Sent: 17 December 2014 12:42
To: CCA
Cc: [REDACTED]
Subject: Advice - URGENT re Hitchin Town Hall

Dear Sir

I would appreciate some urgent advice, since I feel that there is an attempt to impede the democratic process within North Herts District Council, your previous verbal advice to me has been that I am able to attend meetings as I do not have a pecuniary interest.

I have been advised not to attend meetings on several occasions and have taken this up with Peter Lilley who spoke with Grant Shapps (see letter), indeed the subject was raised in the house and the Hansard extract is attached.

I am however no longer a director and wish to attend a very important briefing this Thursday evening where the officer concerned might give a biased view. If I am present there will at least be balance and I see absolutely no reason why I should not attend.

I would appreciate your views please.
Thank you
Regards David

NOTES:

Record meeting - potential future litigation.

Purpose of Scrutiny? - There is a clue in the name, it is to look at matters in an unbiased manner and get to the bottom of what has occurred, it is not a platform for an officer to justify their case unless the whole picture is analysed and debated with representation from all those impacted with the particular topic.

Reason to exclude - would require written legal advice from NHDC

Received P2 papers - Part of my job to review documents.

In P2 there are errors and misinformation, it is biased and inaccurate and this needs to be made clear to members.

No legal advice

No copies of letters received from HTH

No detail of the breaches (there are 8)

PL states: **They seem desperate to stop anyone who has relevant knowledge from participating even in discussion on a subject!**

If NHDC do not let those with relevant knowledge then there is a one sided debate which is totally undemocratic.

Since NHDC refute any breach has occurred, then in their view they are still in partnership with HTH!

TIME LINE

09-Sep-13 Development Agreement Signed NHDC & HTH

05-Feb-14 email to NHDC legal

"I have heard today that this (the contract with Borrás) is being certified by NHDC and that this certified copy will be delivered to Foreman Laws' office today, possibly tomorrow. Some 5 months late. Gavin, I assume this will include all of the plans as of the signing date last September. What is now of equal import is the we are furnished with revised plans as a matter of extreme urgency and are kept updated of all version changes.

It is particularly important since we have a team who are reviewing matters and we have been requested to let NHDC have our input on items such as M&E which, we understand, are now becoming critical. We do not wish to spend time on plans which are out of date. Perhaps you can instigate a process to deliver such changes."

06-Feb-14 - Contract signed with Contractor (Borrás) and final plans and contract delivered. Advised that "This is not a contract form like a GMP which allows sharing of savings between client and contractor."

21-Feb-14 emails from Robinson re stud wall states 14:16 "The D&A Statement indicates the intervention should be reversible" 16:00 "Should' is an obligation - this will be reversible."

25-Feb-14 - HTH send letter WP concerning breach of agreement - also advising NHDC that Listed Building Consent was require for any variations.

28-Feb-14 - Major meeting with all parties (Leader, legals etc) Details of breaches and poor working practice set out very clearly by David Parsley FRICS

Minutes of meeting inaccurate and not representative - minutes never agreed.
HTH requested that all future meetings be recorded to ensure accurate record - this request refused.

24-Apr-14 Formal Complaint made against Strategic Director on 14 counts of mismanagement and contract breaches.

HTH agree to hold off taking any action for pending independent enquiry by the LGA.

Report conclusions never passed to HTH only a letter from CEO - no action taken.

01-May-14 NHDC alleges a "breach of confidence" re Comet article - there is not any confidentiality clause in the DA which was taken out by NHDC

June -14 Retrospective Listed Building Consent submitted to NHDC Planning , document states HTH consulted and compliant! Gross misrepresentation.

26-Jun-14 HTH write to Senior partner at Buttress requesting :

- Immediate withdrawal of the inaccurate Design & Access Statement.
- Should it be resubmitted then all references to HTH, must be removed.
- Issue a public apology to HTH in the local press for the inaccurate statements - the wording of such apology to be agreed in advance with HTH.

21-Jul-14 Letter to HTH from NHDC accusing a Material Breach because of HTH's letter of 26 June to Buttress re misrepresentation!

21-Jul-14 Letter to NHDC from Brent Smith re copyright issues. NHDC do not understand copyright law and had previously flagrantly used pictures without obtaining consent or giving acknowledgement to HTH, consent would have been forthcoming.

Aug-14 HTH have discussions with Bankers ACF as they have serious concerns about the delivery of the Project and the impact of the work on their Business Plan, agreed ACF to approach NHDC.

Aug-14 ACF meet with Leader & CEO to express their concerns and request NHDC to solve issues.

No response from NHDC

Aug-14 HTH have further discussions with Bankers ACF as no response from NHDC re earlier meeting.

11-Sep-14 Bankers ACF meet with NHDC to clarify the seriousness of the situation stating they are not inclined to continue supporting the Project. NHDC state there is no breach and it is business as usual

09-Oct-14 Formal notice of Material Breaches (8 in total) served by HTH, which creates a 'Trigger Event'

23-Oct-14 Following Trigger Event HTH exercises the Put Option which necessitates NHDC to pay £440,000 to HTH in exchange for the freehold of 14 & 15 Brand Street.

20-Nov-14 - HTH write to all elected members expressing their concern

02-Dec-14 HTH present to Hitchin Area Committee with a request for dialogue with the CEO & Leader

71. PUBLIC PARTICIPATION - HITCHIN TOWN HALL LTD

Mr Stephen Pike thanked the Chairman for the opportunity to address the Committee and advised that he was Chairman and a Trustee of Hitchin Town Hall Limited (HTHL).

Mr Pike opened the presentation by stating that the attempt to work in partnership with NHDC officers and delivery of the North Hertfordshire Museum and Community Facility at Hitchin Town Hall had fallen far short of the original vision. Mr Pike stated that there had been many hours of voluntary work which was probably in excess of £250,000 at commercial rates and that the freehold title of 14 and 15 Brand Street had been acquired to improve the whole project.

Mr Pike stated that upon the introduction of 15 Brand Street to the scheme which would increase the square footage of the development, make the frontage more attractive NHDC Officers resisted the attempts of HTHL to save *inter alia* the stage in the Mountford Hall, and that with hindsight HTHL should never have agreed to the construction of a 'removable stud wall' across the stage. The construction of the wall on the stage plus heavy machinery and plant – there had been no consultation – and was constructed without HTHL agreement meant there was no possibility of reversing this construction and the stage had been lost for ever and the promised museum storage was compromised.

HTHL and its advisors considered that this amendment to the construction plans was a breach of the Development Agreement (DA) with NHDC together with other breaches previously advised to Council Officers. Mr Pike wished to place on public record at this meeting the extreme dismay of HTHL at the gross misrepresentation by the appointed architect and agent of NHDC stating that HTHL had been consulted on and agreed with the retrospective listed building planning consent.

Mr Pike stated that unfortunately, following a request for this statement to be retracted it was a great surprise to be in receipt of an NHDC News Release that stated that HTHL were probably in breach of the DA and this was disingenuous to say the least.

Mr Pike confirmed that there was no alternative open to HTHL other than to serve notice of termination of the Development Agreement and therefore had exercised the contractual obligation – known as a 'Put Option' – which would require NHDC to pay HTHL £440,000 to take possession of the legal ownership of 14 and 15 Brand Street. Mr Pike stressed to those present that HTHL owned the land on which the foyer was being constructed.

Mr Pike opined that it was very unfortunate that NHDC officers had totally rejected the HTHL notice of termination and the 'put option' and the officer's response had been to refer to procedures within the DA to resolve any disputes which HTHL refuted as there were no provisions in the DA for a statement of material breach. Mr Pike advised the Committee that as a result of these material breaches HTHL had been unable to undertake a community fundraising programme. HTHL had a very robust business plan that was approved by their bankers and by NHDC but the current pre-opening and ongoing future running plans were compromised by these breaches.

Mr Pike stated again that HTHL were very frustrated despite all their efforts and that there had been very little if any 'partnership' working with NHDC. **However HTHL were still open to a meeting at this late stage to consider a way forward on a Without Prejudice basis.** In addition HTHL had on many occasions requested a meeting with the NHDC Chief Executive and Leader of the Council but this had been declined.

Mr Pike concluded his presentation with illustrations of the issues cited in his speech that made up the material breach of the Development Agreement viz. The masonry wall, pipe work and plant to the rear of the wall; plant above the wall meant for museum storage; air venting on the balcony; ducting at the entrance; an air curtain in the entrance; floor damage in the Lucas Room, plant in the main office at the Town Hall; the proposed museum entrance.

The Chairman thanked Mr Pike for the presentation including the illustrations and enquired if there were any questions. There were no questions

RESOLVED:

- (1) That Mr Stephen Pike be thanked for the presentation;
- (2) That the decision taken by Hitchin Town Hall Limited to serve due notice of termination of the Development Agreement with North Herts District Council be noted.

Exhibit 22a

EMAIL EXCHANGE WITH THE CONSERVATIVE COUNCILLORS' ASSOCIATION
- 12 DECEMBER 2014 to 3RD MARCH 2015

This email trail evidences that I sought and obtained independent advice from the Conservative Councillors' Association concerning my position following my resignation as a trustee/director from HTH Ltd on 15th November 2014.

In spite of this evidence and that obtained from the Rt Hon Eric Pickles MP the Monitoring Officer continued to insist and advised the Chair that I should leave the council chamber and not partake in any debate or vote.

From: Mabbutt, Alan [mailto:Alan.Mabbutt@Conservatives.com]
Sent: 03 March 2015 13:35
To: David Leal-Bennett
Subject: RE: Advice - URGENT re Hitchin Town Hall

Dear David,

My view has not changed. I have also consulted with a senior councillor with planning experience.

To reiterate, we certainly do not think you have a disclosable interest and our view is you never did.

On the declarable interest point of view, a past association does not apply to a current situation and you would therefore not have a declarable interest either.

We can see no reason why you cannot attend the Council meeting as a full voting member.

Kind Regards

Alan Mabbutt OBE
Nominating Officer
Conservative Party

From: David Leal-Bennett [REDACTED]
Sent: 03 March 2015 12:42
To: Mabbutt, Alan
Subject: RE: Advice - URGENT re Hitchin Town Hall

Dear Alan

Please see enclosed a briefing for Peter Lilley, with whom I spoke in detail from Heathrow on Saturday morning, I have only just returned.

Perhaps we may have a chat but hopefully the attached gives an outline. I have to say that I am appalled at the way I am being treated

You may also wish to take a look at the 'minutes' of NHDC following the Overview & Scrutiny meeting on 18th December 2014, when I was also barred.

<http://www.north-herts.gov.uk/aksnherts/users/public/admin/kab12.pl?cmte=OSC&meet=36&arc=71>

I look forward to hearing from you.

Kind regards

David

David Leal-Bennett

From: Mabbutt, Alan [<mailto:Alan.Mabbutt@Conservatives.com>]
Sent: 13 February 2015 15:31
To: David Leal-Bennett
Subject: RE: Advice - URGENT re Hitchin Town Hall

Dear David,

Do keep me up to date.

You would be advised not to accuse the Chairman of anything however as she will have been following officer advice and may well not have felt confident contradicting a senior officer.

As previously though, I find it difficult to understand why your presence would affect any court case adversely.

Regards

Alan

Alan Mabbutt OBE
Nominating Officer
Conservative Party

From: David Leal-Bennett [REDACTED]
Sent: 13 February 2015 15:12
To: Mabbutt, Alan
Subject: RE: Advice - URGENT re Hitchin Town Hall

Dear Alan

I did not leave and the Monitoring Office read out the advice which was as per his email:

"I write further to the previous emails below regarding Hitchin Town Hall matters when they are considered by committees of the Council.

As you know Full Council tonight is receiving a recommendation from Cabinet to increase the Capital Programme for additional costs in respect of the North Hertfordshire Museum and Community Facility project. As the decision tonight is a financial one I would strongly urge you to follow my advice set out below, declare an interest and leave the room for the duration of the item. Failure to do so puts any decision made tonight at risk.

I will also take this opportunity to remind you that if you would like to, the Code of Conduct does allow you to speak as a member of the public and listen to any other

public speeches, but it then requires that you must leave the room prior to the item being presented and debated."

The MO accepts that I do not have a pecuniary interest, (I never had) but seems intent on stopping me from attending. At a recent Cabinet meeting the reason given was because I could be called as a witness since HTH Ltd have served notice of termination of their contract!

Matters progressed and I was asked by the Chair if would leave the chamber. I thanked the MO for his advice and stated that I had my own advice which contradicted his interpretation and as such I would remain. This seemed to cause confusion and the chair walked out and suspended the meeting!

There was a lot of discussion behind the scenes and after some considerable time, during which the press were wandering around, the Chair appeared and said that under the circumstances, the report would be deferred; the meeting then continued to complete the business on the agenda.

I, and others, found this bizarre in the extreme and so I have today emailed the Conservative Group Leader, Lynda Needham the following:

"Lynda

For the record, I believe last night was handled appalling badly by the chair and officers. It is only "advice" that is given by the Monitoring Officer and it not his place to do anything else, I am not obliged to take it especially when I have received my own advice from the highest level, of which you are well aware.

This has officer "control" written all over it and it is totally unacceptable and is contrary to the democratic process. I would remind you of Peter Lilley's comment " They seem desperate to stop anyone who has relevant knowledge from participating even in discussion on a subject!"

This was a Part 1 item and all the detail was in the public domain, the fact that there was a "financial decision" to be made, and this was used as the reason to exclude me, is totally irrelevant. The statement made to me by the MO that " Failure to do so (i.e. leave the room) puts any decision made tonight at risk" is completely ridiculous.

There was absolutely no reason to defer the report and in so doing the Chair has brought NHDC into disrepute. She has also ensured that the 'additional cost' request has been stalled through bureaucratic nonsense.

If you look at the historic public reports it is clear that this project is at least £750,000 over budget and someone needs to be held to account.

**Lynda I will NOT be intimidated, this vendetta has gone on long enough.
David"**

The MO has not contacted me today although I suspect he will.

The advice and the history of this has been long and for an official complaint I will need to take time to set this out in a clear timeline with supplementary evidence attached. You may recall that when this originally occurred, that Peter raised it with the Minister and it was discussed in Parliament, I have the Hansard record. You may also wish to know that, because of the incorrect advice I was given many months ago, I amended my

Erweitert: Umwelt-Beziehungen

4 | Page

Confidential - email trail with CCA
12-Dec-14 to 03-Mar-15

020 7984 8144 - CCA, CCHQ, 4 Matthew Parker Street, London SW1H 9HQ -
cca@conservatives.com www.conservativecouncillors.com

From: David Leal-Bennett [REDACTED]
Sent: 12 February 2015 12:27
To: CCA
Subject: Advice - URGENT re Hitchin Town Hall

Dear Allan

I refer to the CCA email response concerning this issue on 17th December 2014, and thank you for that advice.

Unfortunately this has surfaced again and I have again been emailed by the Monitoring Officer who, with the support of the Officer responsible for the Museum & Town Hall Project, seems intent on causing me as much grief as possible.

I spoke with Peter Lilley about the whole saga on Monday afternoon and he suggested that I contact you directly. I have also just forwarded this email to him:

"Dear Peter

Further to our telephone conversation, and not surprisingly, I have received another warning from the Monitoring Officer concerning the Full Council meeting tonight, see below.

I am no longer a director and my only involvement recently has been to try to get all parties together; against all odds I have succeeded in this and a mediator is to be appointed. This is important, especially as £1m of public money is at risk.

I am now being told that because there is a dispute (which could go to court) and that since I may be called as a witness against NHDC, I am prejudiced. My response, if it ever gets to that stage, is that I would tell the whole truth and to suggest otherwise is a slur on my character.

The monetary issue being discussed tonight is concerning the spend on the Project which is now over 6 months late and some £700k over the original budget.

Regards

David"

Allan, I do not propose to leave the debate and will take part although I would not propose to vote.

I have now spent many hours over this issue and it is causing me stress, it is impacting my personal life and also my political life where I am Chair of NHDC's Hitchin Area Committee.

I consider the approach of NHDC to be harassment and, as important, in direct contravention of the democratic process which should encourage robust debate.

Enough is enough and I now wish, with the assistance of the CCA, to make a formal complaint at the highest level, I look forward to your advice on my stance tonight and the options open to me.

Kind regards

David

David Leal-Bennett

From: Anthony Roche [<mailto:Anthony.Roche@north-herts.gov.uk>]
Sent: 12 February 2015 11:37
To: 'David Leal-Bennett'
Cc: David Scholes
Subject: RE: Directorships

Cllr Leal-Bennett

I write further to the previous emails below regarding Hitchin Town Hall matters when they are considered by committees of the Council.

As you know Full Council tonight is receiving a recommendation from Cabinet to increase the Capital Programme for additional costs in respect of the North Hertfordshire Museum and Community Facility project. As the decision tonight is a financial one I would strongly urge you to follow my advice set out below, declare an interest and leave the room for the duration of the item. Failure to do so puts any decision made tonight at risk.

I will also take this opportunity to remind you that if you would like to, the Code of Conduct does allow you to speak as a member of the public and listen to any other public speeches, but it then requires that you must leave the room prior to the item being presented and debated.

Many thanks

Anthony Roche
Acting Corporate Legal Manager and Monitoring Officer

From: Anthony Roche
Sent: 29 January 2015 17:21
To: 'David Leal-Bennett'
Cc: David Scholes
Subject: RE: Directorships

Cllr Leal-Bennett

Further to the email below and the Overview and Scrutiny Committee meeting on 18 December 2014 I am sending a quick email to confirm that my advice below as to how you should approach Hitchin Town Hall matters has not changed. Please note that the Code of Conduct requirements also apply to committees you attend to observe, for example Cabinet on Tuesday night, as well as committees you are a member of.

Many thanks

Anthony Roche
Acting Corporate Legal Manager and Monitoring Officer

From: Anthony Roche
Sent: 17 December 2014 15:35
To: 'David Leal-Bennett'
Cc: David Scholes
Subject: RE: Directorships

Cllr Leal-Bennett

Thank you for your email and I note your comments.

I would be grateful if you could respond to the first paragraph of my email regarding the declaration of interest form.

With regard to your stated approach to the meeting tomorrow night I will need to consider with the other statutory officers how to protect the Council's position, given the contract dispute with HTHL.

Many thanks

Anthony Roche
Acting Corporate Legal Manager and Monitoring Officer

From: David Leal-Bennett [<mailto:dlb@syssol.net>]
Sent: 16 December 2014 21:03
To: Anthony Roche
Cc: David Scholes
Subject: Re: Directorships

Thank you and how prediciable.
I am happy to listen to your advice but do not accept your interpretation.

David Leal-Bennett

Sent from my iPhone

On 16 Dec 2014, at 19:18, Anthony Roche <Anthony.Roche@north-herts.gov.uk> wrote:

Cllr Leal-Bennett

Thank you for your email.

I am aware of the correspondence you had with Katie on the issue of your form and it is precisely because of that I was seeking that you complete the form afresh. Given the (now) historic dispute it is beneficial to all that we have a new form that provides up to date information and draws a line under the previous correspondence. I would have no

objection to you sending me the updated form and stating that by doing so you are not conceding the point as to whether or not in your view you previously had a DPI.

With regard to your directorship of HTHL I can confirm that I have received proof of your directorship ceasing.

In my email I also offered to provide advice on your position in respect of Hitchin Town Hall matters given your change in circumstances. I note that you have not taken up that offer (although no doubt this is due to the email difficulties to which you refer). Given the subject matter of the Overview and Scrutiny meeting on Thursday it would seem sensible for me to provide that advice.

On the basis that you are no longer a director of HTHL my advice is that you no longer have a DPI (I acknowledge your differing interpretation of the DPI regulations, but that is now a moot point given the directorship has ended). This means that the potential criminal sanctions under the regulations for failure to comply are no longer applicable.

As you know under the Code of Conduct adopted by Full Council on 18 July 2013 we have a second category of interests, Declarable Interests. My advice is that due to your long standing relationship with HTHL you would be considered to have a "close association" with the organisation under 4.6 (a) and/or (b) and that additionally 4.6 (c) applies. I have reproduced in full the relevant section below.

Declarable Interests

4.6 You have a Declarable Interest in an item of business of the Council where:
(a) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or your employer or a person or body with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward for which you have been elected or otherwise of the Council's administrative area; or
(b) it relates to or is likely to affect any of the interests listed in the Appendix to this Code in respect of a member of your family (other than covered in the legislation) or your employer or a person or body with whom you have a close association; or
(c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest; or

....
and that interest is not a Disclosable Pecuniary Interest.

The effect of this is set out at 7.3, 7.4 and 7.5 of the Code of Conduct. Again I have set those out in full below. My advice is that the test in 7.3 would be met, due to your long standing role on the project with HTHL and therefore whilst you can speak as a member of the public and listen to any other public speeches, you must leave the room prior to the item being presented and debated.

7.3 If you are present at a meeting of the council and you have a Declarable Interest relating to any business which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest you must not participate in the discussion or vote on the item, although you may speak as a member of the public.

7.4 If you have a Disclosable Pecuniary Interest, or a Declarable Interest which is so significant that you must not participate, you must leave the room or chamber where the meeting is being held unless you have received a dispensation from the Monitoring Officer.

7.5 If you are leaving the room or chamber in accordance with paragraph 7.4 you may listen to any speeches from the public but must leave prior to the item being presented

or in any other case, whenever it becomes apparent that that business is being considered at that meeting.

I am of course happy to advise further if that would assist. I am aware you have been in correspondence with David Scholes regarding the HTH project and therefore I have copied him in to this email.

Many thanks

Anthony Roche
Acting Corporate Legal Manager and Monitoring Officer

-----Original Message-----

From: David Leal-Bennett [REDACTED]
Sent: **12 December 2014 10:36**
To: Anthony Roche
Subject: Directorships

Dear Anthony

I have had a few problems with my emails lately as I am moving over to fibre, but I seem to recall you sent me a request.

As far as my disclosure form is concerned this has not changed since the HTH connection was never considered by me to be a DPI, if you check the records you will see that is the case. Katy was dealing with this and there's quite a bit of (unwarranted in my view) correspondence.

With regard to the register at Companies House I do not think it appropriate that I do a search on your behalf, that must surely be a process for NHDC to undertake.

Regards

David

David Leal-Bennett
[REDACTED]
Sent from my iPhone

Confidential - Conservatives Only

Exhibit 23

10 MAR-15 - CHAIR'S BRIEFING NOTES

COUNCIL – 10 MARCH 2015

CHAIRMAN'S NOTES

**(BLACK FOR CLLR COWLEY
RED FOR ANTHONY
PURPLE IS ADVICE)**

THE AGENDA

1. APOLOGIES FOR ABSENCE

Cllrs Barnard, Burt, Frost, Harwood, Millard, Morris and Sangha.

2. CHAIRMAN'S ANNOUNCEMENTS

1. Recording the Meeting

Following a request from a Member an audio recording is being made of this meeting

2. Declarations of Interest

A reminder that, in line with the Code of Conduct, any Declarations of Interest need to be declared immediately prior to the item in question.

3. NORTH HERTFORDSHIRE MUSEUM AND COMMUNITY FACILITY AT HITCHIN TOWN HALL – PROJECT UPDATE

1. Introduction

This is an extra ordinary meeting of the Council and the item of business is the progression of the District wide museum and Hitchin Town Hall regeneration.

As Members will recall there was an item on the agenda of Council on the 12th February however this item was withdrawn prior to consideration. A revised report is to be considered tonight.

Before I start I am aware that there may be Members present who have interests to declare – I would invite those Members to declare their interests at this point.

NB: CABINET SUB COMMITTEE

IN THE EVENT THAT CLLR LEAL BENNETT DOES NOT DECLARE

I am aware that Councillor Leal-Bennett has an interest in this matter – do you have an interest to declare ?

IN THE ABSENSE OF A DECLARATION TURN TO ANTHONY ROCHE

Mr Roche could you please advise me on this matter:

Anthony: Firstly I would ask that any Members of the Standards Committee leave the room now for a short period of time.

Members will be aware from the recent Council meeting and that of Overview and Scrutiny meeting on this project, and subsequent press coverage, that Cllr Leal-Bennett was advised that in the view of myself as Monitoring Officer he had a close association with Hitchin Town Hall Limited as set out in paragraphs 4.6 (a) and/or (b) of the Code of Conduct adopted by Full Council. The Code of Conduct applies when councillors are present at committee meetings even if they are not a member of that committee.

As I advised previously the requirements of the Code of Conduct are that whilst he can speak as a member of the public and listen to any other public speeches, he must leave the room prior to the item being presented and debated. My advice has not changed in that I consider if Cllr Leal-Bennett is present for the debate tonight he is potentially breaching the Code of Conduct. As the decision tonight is a financial one I would be failing in my duty as Monitoring Officer if I did not raise concerns at a Member taking part in that decision, potentially in breach of the Code of Conduct. This would put any Council decision at risk. I would therefore advise that Cllr Leal-Bennett is asked to leave the Council Chamber for this item.

In light of that advice which is the same as the advice that you previously received Cllr Leal-Bennett if you wish to speak to the item I will give you the opportunity to do so now as a member of the public.

STANDARDS MEMBERS CAN RETURN

5 MINS TO SPEAK

FOLLOWING ANY SPEECH FROM Cllr Leal-Bennett

NB: If Cllr Leal-Bennett chooses not to speak, Chair may need to be explicit that this is his only opportunity to make any remarks. Standards Members should stay out of the room unless he elects to make the speech, as otherwise leads straight into below which requires them to leave again

In accordance with the advice that you have received I would ask that you now leave the meeting.

IF CLLR LEAL-BENNETT DOES NOT LEAVE:

I would like some further advice please from the Monitoring Officer please

Anthony: I would ask that any Members of the Standards Committee leave the room for a short period of time.

The decision that Council is being asked to make tonight is a financial one and I have already commented upon that. The matter requires a decision from Council tonight as the Council has to meet its contractual obligations. Therefore the advice to you is as given previously however the circumstances are that we need to have a decision to enable the obligations of our construction contract to be fulfilled. It is a matter of weighing up the risks to the Council -- you may legitimately conclude that the greater risk to the Council would be posed from not making a decision tonight

Councillor Leal-Bennett you place the Council in a very difficult position. Having considered the Monitoring Officers advice I will continue with the item -- please be clear that you have had your opportunity to address Members in accordance with the provisions of the Code of Conduct so

you will not be heard further nor will you be entitled to vote on the item.

STANDARDS MEMBERS CAN RETURN

2. Report

Councillor Tony Hunter to present the report

CLLR HUNTER TO MOVE THE ITEM

CLLR NEEDHAM ?? TO SECOND

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.*

DEBATE

Exhibit 23a

10 MAR-15 - TRANSCRIPT OF EXTRAORDINARY COUNCIL MEETING

00:00

Lovewell/Cunningham Cabinet subcommittee following legal advice and will withdraw from the chamber

Revised report

Offered evidence referred to MO

Standards Committee leave the room

Repeat remarks from last time:

Members will be aware that Cllr L-B advised that he had a 'close association'. 4.6a and 4.6b of Code of Conduct ("COC").

As per CoC he can speak as a member of public but must leave the room etc etc

If he is present he is potentially breaching the code of conduct! As the decision tonight is a financial one I would be failing in my duty as MO if I did not raise concerns that a member taking part in that decision would potentially be in breach of the CoC. This would put any council decision at risk, I would therefore advise that Cllr L-B is asked to leave the chamber for this item.

7:08

Cllr L-B Asked if he wanted to speak as a member of the public.

Cllr L-B: I would like to respond to the MO Chair. We have been through this before and I wish to refer to the CoC

8:04

Cllr L-B: It says Cllrs should hold these seven values, **Selflessness, Integrity, Objectivity, Accountability, Openness and Honesty**

It also says:

"Information should not be withheld from the public unless there are clear and lawful reasons for so doing."

Cllrs should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Cllr L-B: **There are lots of 'potentials' thoughts and interpretations there from the MO and I'll give you another one. From CCA on 3rd March 2015 and I have passed this to the leader with all the email trails from December 2014**

8:50

Cllr L-B: **Dear David,**

My view has not changed. I have also consulted with a senior councillor with planning experience.

To reiterate, we certainly do not think you have a disclosable interest and our view is you never did.

On the declarable interest point of view, a past association does not apply to a current situation and you would therefore not have a declarable interest either.

We can see no reason why you cannot attend the Council meeting as a full voting member.

**Kind Regards
Alan Mabbutt OBE**

9:27

Cllr L-B: This tonight is nothing about HTH but the budget and the amount of money being spent

9:36

Cllr L-B: Also had copy letter addressed to Rt Hon Peter Lilley MP from The Rt. Hon Eric Pickles MP, I will read the last paragraph.

Council monitoring officers can offer advice to councillors. But the final decision about whether it is right to participate in discussion or voting remains one for elected members. Councillors should take decisions with full consciousness of the consequences of their actions. The goal of the Localism Act was to inject some common sense whilst allowing for genuine debate, freedom of speech and democratic representation. It would appear that such common sense may be lacking in the case you cite.

John Eve



THE RT HON ERIC PICKLES MP

On that basis Chair I do not intend leaving the room unless you, through the CoC rule specifically that I have to go.

10:38

Do you wish to respond MO? I have not had the benefit of the exchange of any of that correspondence. I don't think anything that has been read out changes the advice I have given and it's a matter for you Chair to consider.

11:02

Cllr Strong: Point of clarification. When the MO spoke initially he believed that dlb has a 'close association', what does he believe that CA to be now. Because it's very unclear to me that as dlb is no longer a director of HTH Ltd exactly why you believe that there is such an association.

11:27

MO: There has been correspondence that I am aware of (to Needham on a confidential basis) where dlb has referred to attending a recent board meeting of HTH Ltd and I believe he has also referred to that publically and he continues to be involved in terms of discussions with both the council and HTH Ltd in respect of the future of the Project.

Chair - whisper

12:11 Do I let him speak again?

12:15

Cllr L-B: May I respond to that please chair because that is quite an accusation of what's going on and I think I have the right to respond.

Extraordinary Full Council – 10-Mar-15 Transcript

12:28

Chair: I do not wish to carry on that discussion. I think MO has made himself quite clear.

12:35

Cllr L-B: Well he is misinformed I'm afraid Chair misinformed.

Chair: - whisper

12:39 ?

12:41 Perhaps you would like to take it up with MO after the meeting.

12:47 Cllr Sal Jarvis: – Chair I think it would be appropriate to hear because I think dlb is entitled to a point of personal information at least if he believes that the council has been misinformed.

Chair: Thank you Cllr Needham indicated she wished to speak:

13:05

LN I think the comment made by the MO about "I have been invited to a Board meeting to sit round a table" came from me because I have the email from dlb which says that, um MO has not seen it, I have discussed the content of the email because we are trying to arrange a meeting which I have been leading on with other people and certainly that is what is quite clearly said in the email.

13:47

Chair Any further comment MO,

3:55

MO: The only point I would like to make is Members will be aware that this point was first discussed at the O&S meeting in the middle of December and we are nearly 3 months on and I have received no correspondence from dlb at all on the point of CO or not. So I have received nothing from him.

14:18

Chair: Therefore in accordance with the advice you have received I would ask that you now leave the meeting.

14:21

Cllr L-B: For clarification are you instructing me to leave the meeting as per the CoC and your decision is final, I would like to know please quite specifically because there is a lot of misinformation going on around here at the moment.

14:41

Chair: I'm asking you to leave the meeting I am not instructing you. I'm asking you to consider your position to leave the meeting.

14:48

Cllr L-B: I have to say I have considered my position regarding the meeting and this is what happened previously when we had the O&S and I see no reason why I should leave the meeting now. If the MO can tell me that in not acquiescing to your request I am in breach of the CoC, I need to know that.

15:17

chair: I want to seek some further advice from the MO

15:28

MO: The advice is as previously stated in relation to presence at the meeting is 'potentially' a breach of the CoC, so whether or not, not following your request is a breach is a moot point given that we are already saying presence would be a breach anyway, but the decision that council is being asked to be made tonight is a financial one and I have commented on that, the matter requires a decision from the council tonight as the council has to meet its contractual obligations, therefore the advice to you is as previously given. However the circumstances are that we need to have a decision to enable the obligations of our construction contract to be fulfilled, it is a matter of weighing up the risk to the council you may legitimately conclude that the greater risk to the council would be posed from not making a decision tonight rather than dlb being present.

16:26

Chair: Cllr L-B you do place the council in a very difficult position. Having considered the MO advice I will continue with the item but please be clear that you have had your opportunity to address members in accordance with the provisions of the CoC so you will not be heard further nor will you be entitled to vote on the item.

17:06

Cllr L-B: I think that is quite disgraceful I have to say but I will leave under protest.

17:15

Cllr S Jarvis: Before he goes Chair can I just ask one thing, are we able as a council to refuse a councillor who has not declared an interest the right to vote. Could I have advice on that please. If that is the case then I'm content but I would like to clarify that.

17:29

MO: the issue that the Chair and the statutory officers have to consider is the robustness of the council's decision and process and the safety of a decision made tonight and that is the thinking behind the advice that has been provided and the chairman has ultimately discretion on the conduct of the meeting.

18:11

Chair: Therefore I think we will continue with the report.

40:07 Cllr Hunter: It's in hand Chairman, I will be speaking to the Leader who if fact has been doing the negotiations.

40:31

Cllr LN: Yes, we are trying to get a round table meeting but we have reached the stage where looking at dates to find something that's convenient. ****We have made it abundantly clear that if the other party chooses dates we will clear our diaries we are waiting to hear back from them.**

We have been in touch with the ***Institute of Arbitrators**, who have a mediation division, we have asked them to be the independent mediator

We have one small disappointment, when this exercise was started a few weeks ago we were led to believe this would be a tripartite meeting, ourselves, Hitchin Town Hall Ltd and the third party which are the funders. *****We have only heard in last 48 hours that the funders have changed their minds** and do not want to sit

Extraordinary Full Council – 10-Mar-15 Transcript

around the table, but we are going ahead. I can't tell you anything more than that we have no dates.

Certainly we have agreed that we will pay the full fee of the IOA and their mediation division and naturally always conscious of the taxpayers' money. We did start out and we got a quote and we did ask if the quote could be split three ways, because at that point we were of the belief that there would be three parties round the table the other two parties have declined so we have agreed that we will pick up 100% of the fee because we are keen for this round the table meeting to be up and running because obviously we do work with our communities.

That is all I can tell you at the moment.

---End---

Exhibit 23b

18 DEC-14 - TRANSCRIPT OF OVERVIEW & SCRUTING MEETING

12-Feb-15 - FULL COUNCIL MEETING EXTRACT

Full Council Extract - 12-Feb-15

[(1) Prior to the consideration of this item, Councillors Bernard Lovewell, Peter Burt and Julian Cunningham declared that they would be withdrawing from the Chamber, as they were Members of the Cabinet Sub-Committee (Council Charities), which was responsible for making decisions on the North Hertfordshire Museum and Community Facility on behalf of the Hitchin Town Hall: Gymnasium and Workmans Hall Trust.

(2) Prior to the consideration of this item, and following advice from the Monitoring Officer, the Members of the Standards Committee, namely Councillors Judi Billing, Bill Davidson, Steve Hemingway, David Kearns, Alan Millard, M.R.M. Muir and Mike Rice, withdrew from the Chamber for the duration of this item.]

The Monitoring Officer advised that Members would be aware from the recent Overview and Scrutiny Committee meeting on this project, and subsequent press coverage, that Councillor David Leal-Bennett was advised that in the view of the Monitoring Officer, he had a close association with Hitchin Town Hall Limited, as set out in Paragraphs 4.6(a) and/or (b) of the Code of Conduct adopted by Full Council. The requirements of the Code of Conduct are that whilst he could speak as a member of the public and listen to any other public speeches, he must leave the room prior to the item being presented and debated.

The Monitoring Officer stated that his advice had not changed, in that he considered if Councillor Leal-Bennett was present for the debate he was potentially breaching the Code of Conduct. As the decision before Council was a financial one, the Monitoring Officer advised that he would be failing in his duty if he did not raise concerns at a Member taking part in that decision, potentially in breach of the Code of Conduct. This would put any Council decision at risk. He therefore advised that Councillor Leal-Bennett should be asked to leave the Council Chamber for this item.

The Chairman of the Council asked Councillor Leal-Bennett if he was prepared to accede to the advice of the Monitoring Officer and leave the room.

Councillor Leal-Bennett replied that he had obtained his own advice regarding this matter, and stated that he was not prepared to leave the room.

Accordingly, the Chairman of the Council suspended the meeting at 10.10pm, and withdrew from the Council Chamber.

Overview & Scrutiny Extract 18-Dec-14

CHAIRMAN'S ANNOUNCEMENTS

(3) Members were reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. **Members declaring a Declarable Interest** which requires they leave the room under Paragraph 7.4 of the Code of Conduct, can speak on the

item, but must leave the room before the debate and vote.

65

DECLARATIONS OF INTEREST REGARDING DEVELOPMENT AGREEMENT: NORTH HERTFORDSHIRE DISTRICT COUNCIL AND HITCHIN TOWN HALL LIMITED

The Chairman asked if there were any Members that wished to make a Declaration of Interest at this point of the meeting. No Declarations of Interest were made.

The Chairman asked the Monitoring Officer to give further advice regarding Declarations of Interest.

In response to a query by a Member who was concerned that impartiality would be maintained during any possible complaint procedure, Councillors Judi Billing, Paul Clark, Bill Davidson, Steve Hemmingway, S.K. Jarvis, David Kearns, Michael Muir and Mike Rice, who were Members or Substitutes of the Standards Committee left the room during this statement and the following discussions.

The Monitoring Officer read out a statement regarding Declarations of Interest as follows:

"Members will be aware that it would not be my normal approach to discuss advice relating to a particular councillor with a committee, but this is not a normal situation given the contract dispute with Hitchin Town Hall Limited (HTHL) and Councillor Leal-Bennett's links to that organisation.

I can confirm that the end of Cllr Leal-Bennett's director role with HTHL means the question of a Disclosable Pecuniary Interest has ceased.

As Members know under the Code of Conduct adopted by Full Council on 18 July 2013 we have a second category of interests, Declarable Interests. I have provided advice to Cllr Leal-Bennett that due to his long standing relationship with HTHL he would be considered to have a "close association" with the organisation under 4.6 (a) and/or (b) and that additionally 4.6 (c) applies. For the benefit of the Committee I will read those sections out.

Declarable Interests

4.6 You have a Declarable Interest in an item of business of the Council where:
(a) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or your employer or a person or body with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward for which you have been elected or otherwise of the Council's administrative area; or

(b) it relates to or is likely to affect any of the interests listed in the Appendix to this Code in respect of a member of your family (other than covered in the legislation) or your employer or a person or body with whom you have a close association; or

(c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest; or

and that interest is not a Disclosable Pecuniary Interest.

The effect of having a Declarable Interest is set out at 7.3, 7.4 and 7.5 of the Code of Conduct. Paragraph 7.3 states

If you are present at a meeting of the council and you have a Declarable Interest relating to any business which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest you must not participate in the discussion or vote on the item, although you may speak as a member of the public.

My advice is that the test in 7.3 would be met, due to Cllr Leal-Bennett's long standing role on the project with HTHL and therefore the requirements of the Code of Conduct are that whilst he can speak as a member of the public and listen to any other public speeches, he must leave the room prior to the item being presented and debated.

My role as Monitoring Officer has different aspects to it. One role is to provide advice to Members, it is for that Member to decide whether to follow the advice or risk the consequences of not doing so. Another of my roles is to protect the Council.

What we are discussing tonight is a contract dispute with large sums of money at stake and I have to consider what is the right approach for the Council.

My advice to you Chair is therefore as follows:-

1. You should consider whether Councillor Leal-Bennett remains part of the Committee tonight, or whether you ask him to retire to the public gallery, where he could make a presentation as a member of the public. My advice is that, I consider it inappropriate he remain part of the Committee given the nature of the business being discussed and his obvious and clear close association to the party with whom the Council is in dispute.
2. If you accept that advice you should then consider whether Councillor Leal-Bennett is allowed to remain in the public gallery for the Part I debate, if he chooses to in the knowledge of the potential breach of the Council's Code of Conduct, or whether you choose to exclude him from the room. This is a matter for your discretion as Chairman of the Committee.
3. Finally, if Councillor Leal-Bennett is allowed to remain as part of the Committee, or in the public gallery, for the Part I item, you should consider whether to exclude him from the Part II debate. My strong advice, given the contract dispute is with the organisation with whom he has an obvious, clear and recent close association, and given the confidential nature of what will be discussed tonight, is that Councillor Leal-Bennett should be excluded from that part of the meeting in the same way as the members of the public present.

You may also wish to seek the views of the Chief Executive and I am happy to assist further if required."

The Chairman asked Councillor Leal-Bennett whether he had any response to the advice given by the Monitoring Officer.

Councillor Leal-Bennett stated that he was amazed at the advice given and that it was sad to have got to this position. He advised that he was no longer a Director of Hitchin Town Hall Limited nor was he associated with them.

He stated that the Monitoring Officer had been wrong before.

In response to the remarks made by Cllr Leal-Bennett the Monitoring Officer sought clarification on which advice relating to Declarations of Interests he referred to as being the wrong advice and whether he was stating he did not believe he had a Declarable Interest

Councillor Leal-Bennett advised that the previous Monitoring Officer had given incorrect advice prior to the contracts regarding Hitchin Town Hall being signed and stated that he found "singling him out" as offensive.

Councillor Leal-Bennett read from a letter addressed to him from the Conservative Councillors Association as follows:

"That there can be no Declarable Interest because you are no longer a Director (We did not accept that even that created an interest).

4.6 (c) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest;

It cannot apply because there is no interest for the public to judge."

He also read from a letter addressed to him from the Rt Hon Peter Lilley MP as follows:

"Dear David,

They (NHDC) seem desperate to stop anyone who has relevant knowledge from participating even in discussion on a subject!

By definition you no longer have a close association to HTH Ltd given that you are no longer a Director.

If their interpretation of the rules - applying the close association rule to past associations even though the rule is written in the present tense - were applied generally it would exclude lots of Councillors with relevant knowledge from lots of debates e.g. former pupils and teachers of a school would not be able to participate in matters affecting that school; former members or officers of sports clubs ditto; former

owners of businesses re parking/planning issues affecting local business etc.

I think if I were in your shoes I would state at the beginning of any session that you acknowledge that you previously had a relevant interest but no longer do have a close association so you do not accept the advice of the officials and propose therefore to participate in the debate - (but perhaps not the vote?)"

Councillor Leal-Bennett stated that he intended to take part in the debate, but didn't propose to get into a discussion about blame.

This was a huge issue, which could cost the Council £1 million, that needed addressing.

He stated that he wanted to go forward positively and confirmed that he did not have a Disclosable Interest.

The Monitoring Officer confirmed that in his view Councillor Leal-Bennett did not have a Disclosable Interest, but that he must consider the effect of having a Declarable Interest.

The Chairman welcomed the intention of good will and decided that if Councillor Leal-Bennett wanted to, having considered the advice of the Monitoring Officer, he could remain on the Committee for the Part I section of the meeting.

The Members of the Standards Committee returned to the room and the Chairman informed them of his decision.

66 **PUBLIC PARTICIPATION - MRS ROSEMARY READ**
Mrs Rosemary Read, Trustee of Hitchin Town Hall Limited, thanked the Chairman for the opportunity to address the Committee and gave a verbal presentation.

Mrs Read drew attention to a number of clauses in the Development Agreement between NHDC and Hitchin Town Hall Limited as follows:

Clause 5.1 and Clause 8 of Schedule 2

Clause 5.1 required the Council to consult with Hitchin Town Hall Limited regarding proposed alterations to the Approved Documents and Clause 8 of Schedule 2 allowed Hitchin Town Hall Limited to enter the site at any time during the development, giving reasonable notice, to inspect the works.

Mrs Read stated that Hitchin Town Hall Limited had not been consulted regarding changes to the plans, which resulted in the stage being rendered permanently useless and the foyer inappropriately re-shaped, all caused by the insertion of a plant room above the stage. Furthermore, whilst work was being undertaken, Hitchin Town Hall Limited had been refuse permission to visit the site, and the full horror of what was being done to the stage was only discovered when an acoustics expert was allowed access. This had been sufficiently serious to provoke headlines in the local press. Requests to cease the work whilst discussions took place were ignored.

Clause 16.1

This Clause stated that the Council would project manage the development to ensure that Hitchin Town Hall Limited had appropriate input.

Mrs Read stated that Hitchin Town Hall Limited never had any opportunity for input, as in the early stages of the building work, Project Board meetings were called at 48 hours notice, if we were lucky. There was no opportunity to raise issues of concern, and if we tried to do so, these concerns were not minuted.

Schedule 6 to the Agreement

Schedule 6 to the agreement detailed the essential requirements for the Town Hall as set out by Hitchin Town Hall Limited and stated that the proposed uses for the building included concerts and stage performances.

Mrs Read advised that, in the first scheme, using 14 Brand Street, the museum storage had to be placed on and behind the stage. The introduction of 15 Brand Street into the scheme, at the expense of Hitchin Town Hall Limited, freed up space elsewhere on the site for this storage and significantly improved the façade of the new build. She stated that Hitchin Town Hall Limited believed the increased size of the development would result in a benefit to them. Council's architect states that the addition of 15 Brand Street would make it possible to find alternative museum storage and save the stage. It subsequently appeared that there had been a deliberate decision by the Council to ignore the architect's advice and the only conclusion was that the stage had been lost due to managerial choice. It seems that the placing of the plant room had resulted in less than expected museum storage.

The circumstances previously described constituted a breach of agreement.

The granting of Listed Building Consent ignored the advice of English Heritage to consider a less visually intrusive solution to the pipework and warm air curtain in the foyer, and the process by which it was granted had been described by Eric Pickles, in a letter to the MP, as poor practice.

Mrs Read informed Members that repeated requests had been made for face to face meetings with the Council's Chief Executive and Leader of the Council in the hope that a way forward could be found for this impossible situation. The requests had been consistently refused and communications had been channelled through the Officer concerned despite the Council being informed that Hitchin Town Hall Limited could not work with him.

The result of the on-going bad publicity, caused by the Council's failure to attempt to keep Hitchin Town Hall Limited informed of their intentions or consult with them, meant that fundraising, due to be started early 2014, had not been attempted.

The Hitchin Town Hall Limited Business Plan, which NHDC had access to early in the process, was reliant on being able to raise sufficient money from large events, both to repay loans and subsidise community use. This required an unadulterated, refurbished Listed Building, which was not what will be provided. It was with huge regret that Hitchin Town Hall Limited and their funders had agreed that the model was no longer viable therefore the funding had been withdrawn.

Mrs Read concluded by stating that the Development Agreement had been signed and publicised with much trumpeting about NHDC working in partnership with Hitchin Town Hall Limited, and a collaborative approach was vital to the success of the joint project. Collaboration had however been significant by its absence throughout the sorry saga.

The Chairman thanked Mrs Read for her presentation.

67

PUBLIC PARTICIPATION - MR BRIAN FOREMAN

Mr Brian Foreman thanked the Chairman for the opportunity to address the Committee and gave a verbal presentation.

Mr Foreman informed Members that, in a classic example of mismanagement by NHDC Officers, the project to provide a community facility with a new District Museum now appeared to be a disaster.

The Directors of Hitchin Town Hall Limited had worked tirelessly to benefit the community, but had been thwarted in their endeavours, with a serious breakdown in the consultation process by NHDC with far too much being done without the knowledge or agreement of Hitchin Town Hall Limited.

At community group meetings with Hitchin Initiative and the Directors of Hitchin Town Hall Limited, attendees were regularly advised of the difficult problems in working with NHDC Officers. The partnership simply wasn't happening.

Mr Foreman advised that initially Hitchin Town Hall Limited were denied access and once access was achieved became extremely concerned about work being done without their approval. Substantive changes were being made to the Grade II Listed Building. The work undertaken to get the building listed to protect it from being sold and made into a nightclub, like the earlier Town Hall, boarded up or destroyed, now seemed less worthwhile. A building of such architectural merit deserved to be preserved for future generations to continue to admire and enjoy with its main features intact.

When the community groups agreed to purchase 15 Brand Street as well as 14 Brand Street it was hoped this would save the proposed stud wall from being built across the stage. The original stage had been enlarged, as it was found to be too small for the size of the Mountford Hall. NHDC Officers reaped the benefit of a much better museum entrance without accepting that the museum storage could be moved into the new museum. The situation became far worse once a far more permanent concrete wall was built across the stage, without prior knowledge of the Directors of Hitchin Town Hall Limited.

Mr Foreman continued by informing Members that, in March the newspapers broke the story of what was happening in the Town Hall and there was a huge public outcry. Photographs of the wall and other seemingly inappropriate alterations were also published. There was now alleged vandalism by NHDC made public whilst the Leader of the Council attempted to uphold the Council's position.

He stated that, if the Chief Executive had taken charge and become Project Manager, the course of events may have changed. Some may consider that the buck stopped with the Chief Executive and that he should accept responsibility for what had occurred.

It was now virtually impossible for the community groups to raise the funding required for the project. The Business Plan had been seriously compromised and it was possible that, if news reached the bankers, finance might not be available. It was understood that finance was eventually pulled and the process of many hours spent by the community was wasted.

Mr Foreman stated that lessons must be learnt and, if North Hertfordshire was to get closer to the aspirations of the Communities and Local Government Act 2011 he suggested:

- Any future project should have an independent Chair;
- The Chief Executive should take a leading role and be prepared to meet with Partners at regular intervals throughout the project;
- Area Committees should be given a greater opportunity to make recommendations to Cabinet, including Information Notes;
- Cabinet should, in its makeup, reflect the size of population within its District, one Cabinet Member for Hitchin was insufficient;
- Training should be provided for NHDC Officers in working with the community, including partnerships;
- Part II agenda items should be more limited and used as sparingly as possible.

Mr Foreman concluded by saying that:

- NHDC had been brought into disrepute;
- The Development Agreement had allegedly been breached by NHDC, with legal ramifications;
- Councillors had only been allowed access to the Town Hall in August 2014 and prevented from taking photographs of this public building;
- It was now possible that NHDC may face a bill in excess of £1 million.

He ask the Overview and Scrutiny Committee to name and shame those considered responsible for creating the unmitigated disaster of a community partnership and recommend action(s) to be taken against them.

The Chairman thanked Mr Foreman for his presentation.

68 **DEVELOPMENT AGREEMENT: NORTH HERTFORDSHIRE DISTRICT COUNCIL & HITCHIN TOWN HALL LTD**

Report

Annexe 1.1

Annexe 1.2

Annexe 1.3

Annexe 1.4

Annexe 1.5

Annexe 1.6

Annexe 1.7

Annexe 1.8

Annexe 2

Councillor Tricia Cowley, Portfolio Holder for Community Engagement and Rural Affairs for much of the period during which this project was discussed and developed, informed Members that she first wished to address a number of points made by the public speaker Rosemary Read of Hitchin Town Hall Limited and by Councillor Leal-Bennett.

Members will have noticed the frequent reference to Officers and the derogatory tone in which they were viewed by Hitchin Town Hall Directors. The insinuation was that Officers had somehow been responsible for impeding the proper implementation of the legally binding agreement between Hitchin Town Hall Limited and North Hertfordshire District Council and had somehow operated in a way that was contrary to the will of Council.

She stated that nothing could have been further from the truth, from her own dealings with the Directors of Hitchin Town Hall Limited, she knew that Officers had attempted to act in a reasonable manner in order to deliver a complex project in an environment where Hitchin Town Hall Limited had chosen to brief the local media and others in a way that was clearly intended to force changes on the agreed scheme and, in particular, to affect fundamental changes to the layout of the stage and museum storage arrangement behind it.

Councillor Cowley reminded Members that the clear intention of the Council was only to agree to such changes if they were delivered without additional cost, delays in the project and if practical arrangements could be found to deal with museum storage elsewhere.

Despite receiving an ill-considered proposal from Hitchin Town Hall Limited to do this, it had been perfectly clear that no changes of the sort being promoted were capable of meeting these conditions and, in the circumstances, Officers, in close consultation with the Political Leadership of the Council, had attempted to protect the Council's interests, although this had not prevented Hitchin Town Hall Limited abandoning its responsibilities as our development partner and leaving Council Tax payers to face an additional cost.

She informed Members that the approach adopted by Hitchin Town Hall Limited had been a feature of the project from its inception. The risks identified in the reports being considered this evening clearly highlight the possibility that Hitchin Town Hall

Limited could undermine delivery of the project. It now seemed likely that their actions had fundamentally breached/undermined the trust that Councillors placed in them to deliver their side of the bargain. It was even more galling that the approach taken by Hitchin Town Hall Limited came at a time when this innovative project was nearing completion broadly on time and in budget, despite the obstacles placed in the Council's way.

Councillor Cowley concluded by stating that whilst a one sided and gloomy view of the management of this project had been presented in public, it was, in her personal experience, that Hitchin Town Hall Limited's motives and collective corporate behaviour had been appalling and contrary to the spirit of the partnership.

The Strategic Director of Customer Services gave a PowerPoint presentation regarding the report entitled Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Limited as follows:

Decision Making Background

- The decision making process and evolution of the project had been long and complex;
- The original scheme proposed a mezzanine floor in the Mountford Hall, providing community space in the Gymnasium and Workmans Hall.
- The second scheme reversed the proposed layout, retaining the Mountford Hall for community use, but still retained museum storage using approximately half of the stage. At this point the first Development Agreement was signed;
- The inclusion of 15 Brand Street allowed expansion of the scheme, the museum storage on the stage was still included. It was at this point that the second Development Agreement was signed.

Development Agreement

- The progress against the Development Agreement had been broadly on time;
- Unusually, the Planning Control Committee asked for conditions regarding Listed Building Consent to be referred back to them, causing an approximate 6 week delay;
- The Development Agreement had, by agreement, been signed prior to detailed designs being completed.

Timeline

- The timeline had been largely driven by the Community Funders;
- The first Development Agreement, including 14 Brand Street in the project, was signed in October 2012. This was due to end in March 2014;
- Drawings were completed to RIBA Stage F in November 2012;
- The Tender was undertaken in October 2012;
- Hitchin Town Hall Planning Application was submitted in February 2013;
- The Letter of Intent was issued to the contractor in March 2013;
- Council received a report regarding the inclusion of 15 Brand Street in April 2013;
- The second Development Agreement, including 15 Brand Street in the project, was signed in September 2013. This was still largely based on feasibility studies and is due to end in June 2015;
- The contractor was appointed in September 2013.

Development Agreement Process

- The Development Agreement consisted of a number of documents which set out the legal obligations on the parties, from the beginning to the end of the development;
- An overview of the key stages in the Development Agreement appeared in Paragraphs 8.2 and 8.3 of Annexe 1 of the Part I report. It stated that the following sequential events would occur:
 - NHDC Would appoint the Architect;
 - NHDC would appoint the Building Contractor;
 - HTHL would acquire 14 and 15 Brand Street and allow NHDC access to the site for the purpose of the Development;
 - NHDC Would carry out the Development;
 - HTHL would fit out the kitchen for the Caf  at its own cost;
 - The architect would confirm completion of the Development;
 - HTHL would pay its contribution to the Building Contractor;
 - HTHL would transfer 14 and 15 Brand Street to the Trust;
 - NHDC would grant HTHL a Lease in the agreed form and would also enter into the Community Use and Management Agreement.
- The Development Agreement also dealt with ancillary matters such as dispute resolution, liaison arrangements, and the ability for the Agreement to be used as financial security by HTHL along with other standard clauses for a legal agreement of this nature.

Hitchin Town Hall Limited Outstanding Loan

- At a meeting held on 19 September 2012 HTHL requested Council consider granting a loan to cover a number of legal expenses for which it did not the resources to cover until its planned fundraising activity commenced following commencement of construction estimated to be April 2013;
- The terms of the loan granted were:
 - The loan will be up to a maximum of £20,000;
 - Amounts will be paid to HTHL on presentation to the Council of copy invoices addressed to HTHL, up to the value of those invoices and £20,000 as a maximum;
 - The loan will be subject to an interest charge of 3.2% per annum, calculated on a daily basis from the day amounts are paid;
 - The Directors of HTHL will undertake to repay this sum as soon as practicable, with final repayment no later than the day when HTHL received the final loan and grant from ACF;
 - To this end HTHL will make staged repayments at an amount that is affordable, but at a minimum of £1,000 per repayment, on a quarterly basis from June 2013.
- The payments detailed in the final bullet point above had not been made;
- Fundraising by HTHL should have started prior to June 2012 in order to allow repayments to start.

The Strategic Director of Customer Services informed Members that further issues and answers to some of their questions may be considered during the confidential (Part 2) part of the meeting.

Members asked questions and commented on the report and presentation as follows:

Purpose of the Overview and Scrutiny Meetings

A Member queried the purpose of this meeting and suggested that the Committee

Exhibit 24

EMAIL TRAIL WITH MO CONCERNING DPI

From: Anthony Roche
Sent: 11 September 2012 15:07
To: Cllr Leal-Bennett (external)
Cc: John Robinson
Subject: Hitchin Committee tonight

Cllr Leal-Bennett

I am aware that you are meeting with FBE this afternoon with John Robinson and others. I have therefore copied John into this email in case you are unable to pick it up prior to tonight's Hitchin Committee meeting.

I am emailing in respect of the agenda item on the North Herts Museum and Community Facility at Hitchin Town Hall to confirm the steps you need to take in respect of declaring an interest on the item.

You will recall that you have declared your directorship of HTHL on your Register of Disclosable Pecuniary Interests, accordingly in respect of an agenda item on HTH:-

1. You must declare your interest ("I have a Disclosable Pecuniary Interest as a Director of HTHL") and withdraw from the room under the Council's Code of Conduct. Please note there is no discretion on this, it is an absolute requirement.

2. You must not participate on the item in any way (ie you must not speak to the item before withdrawing). To do so would potentially be a criminal offence under s.31(4) and s.34 of the Localism Act

The requirements in respect of Disclosable Pecuniary Interests are more stringent than those under the previous Standards regime, which is a consequence of how the Localism Act changed the landscape. The requirements on other types of Interest are potentially less stringent and you will recall that there are some items you no longer have to include on your Register of Interests as this Council decided that only the minimum legislative requirements would be adopted in respect of registering interests.

I hope your meeting with FBE goes well.

Kind regards

Anthony Roche
Acting Corporate Legal Manager and Monitoring Officer - Legal Services

From: Katie White [<mailto:Katie.White@north-herts.gov.uk>]
Sent: 10 September 2013 16:07
To: Cllr Leal-Bennett (external)
Subject: FW: Hitchin Committee tonight

Cllr Leal-Bennett,

Following on from the good news about the signing of the Development Agreement yesterday, I am aware that Hitchin Committee are meeting tonight with an agenda item on North Herts Museum and Community Facility and that Overview and Scrutiny Committee are meeting next week with a presentation from the Portfolio Holder of Community Engagement and Rural Affairs.

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I have forwarded as an aide memoire the email from Anthony to you last year regarding the declaration of interests. This advice remains the case following council's approval of the updates to the Code of Conduct on 18 July 2013.

Please let me know if you have any queries or if anything is unclear.

Regards,

Katie White
Corporate Legal Manager and Monitoring Officer

From: David Leal-Bennett [<mailto:david@hitchinconservatives.co.uk>]
Sent: 10 September 2013 18:11
To: Katie White
Subject: RE: Hitchin Committee tonight

As on previous occasions and as this is just an update report without discussion or debate I, with the agreement of the chairman, will remain in the room as I have done so o similar occasions.

Incidentally now that this is a formal partnership I assume that there is only a requirement to leave the room if there is a debate on specific issues.

David Leal-Bennett
Hitchin Ward Councillor

From: Katie White [<mailto:Katie.White@north-herts.gov.uk>]
Sent: 16 September 2013 14:02
To: Cllr Leal-Bennett (external)
Subject: RE: Hitchin Committee tonight

Cllr Leal-Bennett,

Thank you for your email below. The issue of your interests in relation to HTHL is a matter that you and I will, I expect, continue to need to touch base on. The fact that there is now a formal contractual partnership, by way of the DA having being signed last week, does not of itself negate you having to declare an interest. Equally, the relevant tests in the legislation and the Council's Code of Conduct do not mean that just because it was an Information report that went to Hitchin Committee, you are able to remain in the room. That is not the test that the legislation or the Council's Code lays down.

I understand that you are perhaps wanting to take a pragmatic commercial approach to the issue of declaration of interests, however the legislation and the Council's Code does not enable this flexibility. Your position in relation to HTHL is significant, and that will continue to create a potential conflict that needs to be managed in relation to your role as an elected Member of NHDC. You have recorded your role as a Director of HTHL as a Disclosable Pecuniary Interest (DPI), and from that certain actions then need to follow. Under the Council's Code of Conduct you need to withdraw from the room. There is no discretion in relation to this. In addition you must not participate on the item in any way at any time, (in particular you must not speak to the item before withdrawing). To do so would be a potentially criminal offence under s31 and s34 of the Localism Act.

I have checked back on the minutes of the Hitchin Committee. It appears that on 11 September 2012, you declared a DPI and left the room in response to an Update report on Hitchin Museum and Community Facility. However I can see from the minutes for the meetings of 4 June and 16 July 2013 where Update reports were also provided, that you do not appear to have declared your DPI. At the very least this inconsistent approach could be confusing to members of the public. However I would

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also suggest to you that you are potentially in breach of the Council's Code of Conduct by not declaring your interest and withdrawing. If at any point you then speak to the item, you are potentially committing a criminal offence.

The Council has given a clear mandate in relation to its support for the project. However there will remain some in Hitchin who will be keeping a watchful eye on matters as they proceed. That means that care needs to be taken not only in relation to your individual role as a Councillor, and your duty to abide by the Code of Conduct, but also in relation to protecting the project as a whole from any unnecessary challenge or unhelpful criticism.

In relation to tomorrow night and the Overview and Scrutiny Committee meeting, I am mindful of the update of the Portfolio Holder and also the Report in relation to the Community Halls strategy where HTH is mentioned, and the interplay with your DPI. I would hope that you would declare your DPI and leave in relation to both items. Given that the Portfolio Holder will likely have other items to report on, as well as Hitchin Museum and Community Facility, we could consult with the Portfolio Holder and Chair of the Committee to ask if the Portfolio Holder's update could be provided in two parts, so that you are able to be present for updates that are not related to the Hitchin Museum and Community Facility.

I am not seeking to be awkward with you, or prevent you discharging your role as an elected Member. What I am seeking to do is support you and protect the Council's position. The fact that you have such a significant role with an organisation that the Council has entered into a contractual partnership with, means that your role as an elected Member is impacted. You and I need to work together to address that in terms of protecting your position and the Council's position.

Please do let me know if anything is unclear, or you have any queries.

Regards,

Katie White
Corporate Legal Manager and Monitoring Officer

From: David Leal-Bennett [<mailto:david@hitchinconservatives.co.uk>]
Sent: 17 September 2013 14:08
To: Katie White
Cc: Cllr R Shakespeare-Smith (external); 'Richard Thake'
Subject: RE: Hitchin Committee tonight

Katie

My response is in RED However please note that I do not consider I have a pecuniary interest in either Hitchin Town Hall Ltd or Mountford Ltd and will be letting you have a revised Register of Members' Interest Form. Q1 It is a charity and is not "for profit or gain" Q7 I do not have a "beneficial interest in securities of that body".

Cllr Leal-Bennett,

Thank you for your email below. The issue of your interests in relation to HTHL is a matter that you (possibly) and I will, I expect, continue to need to touch base on (not necessarily but I am prepared to listen to your interpretation which may differ from my own). The fact that there is now a formal contractual partnership, by way of the DA having being signed last week, does not of itself negate you having to declare an interest. (At Hitchin Committee I declared that I was a Trustee of HTH and gave precise wording to the Chairman) Equally, the relevant tests in the legislation and the Council's Code of Conduct do not mean that just because it was an Information report that went to Hitchin Committee, you are able to remain in the room. (see comment below) That is not the test that the legislation or the Council's Code lays down.

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I understand that you are perhaps wanting to take a pragmatic commercial approach to the issue of declaration of interests, however the legislation and the Council's Code does not enable this flexibility (See intro comment above). Your position in relation to HTHL is significant, and that will continue to create a potential conflict that needs to be managed in relation to your role as an elected Member of NHDC (See intro comment above, I am a trustee of a registered charity). You have recorded your role as a Director of HTHL as a Disclosable Pecuniary Interest (DPI), and from that certain actions then need to follow (See intro comment above, document now amended). Under the Council's Code of Conduct you need to withdraw from the room. There is no discretion in relation to this. In addition you must not participate on the item in any way at any time, (in particular you must not speak to the item before withdrawing). To do so would be a potentially criminal offence under s31 and s34 of the Localism Act. (If you feel that I have committed a criminal offence at any time I suggest you refer the matter to the Police)

I have checked back on the minutes of the Hitchin Committee. It appears that on 11 September 2012, you declared a DPI and left the room in response to an Update report on Hitchin Museum and Community Facility (This was before the DA had been signed in October and as I recall before the company became a charity, I may be incorrect on this latter point). However I can see from the minutes for the meetings of 4 June and 16 July 2013 where Update reports were also provided, that you do not appear to have declared your DPI (Correct I did not consider it to be necessary but on each occasion obtained agreement via a non-verbal communication with the Chairman). At the very least this inconsistent approach (it was not inconsistent see explanation above) could be confusing to members of the public. However I would also suggest to you that you are potentially in breach of the Council's Code of Conduct by not declaring your interest and withdrawing (noted). If at any point you then speak to the item, you are potentially committing a criminal offence. (I did not speak, but I note "potentially")

The Council has given a clear mandate in relation to its support for the project (It is a joint project as evidenced in the signed DA). However there will remain some in Hitchin who will be keeping a watchful eye on matters as they proceed (I do not know to what you are referring, please be more specific). That means that care needs to be taken not only in relation to your individual role as a Councillor, and your duty to abide by the Code of Conduct, but also in relation to protecting the project as a whole from any unnecessary challenge or unhelpful criticism. (I have and always will be cognisant of any potential issues involved, you will recall that I did contact The Rt Hon Peter Lilley MP who raised this specific issue in Parliament and you have the Minister's comment on file)

In relation to tomorrow night and the Overview and Scrutiny Committee meeting, I am mindful of the update of the Portfolio Holder and also the Report in relation to the Community Halls strategy where HTH is mentioned, and the interplay with your DPI (See intro comment above, however I will mention that I no longer have a DPI but that I am a Trustee of HTH). I would hope that you would declare your DPI and leave in relation to both items (See above. Given that the Portfolio Holder will likely have other items to report on, as well as Hitchin Museum and Community Facility, we could consult with the Portfolio Holder and Chair of the Committee to ask if the Portfolio Holder's update could be provided in two parts, so that you are able to be present for updates that are not related to the Hitchin Museum and Community Facility. (See above I propose to remain, it is after all just a report on his portfolio)

I am not seeking to be awkward with you, or prevent you discharging your role as an elected Member (see above comment and the response from the Minister). What I am seeking to do is support you and protect the Council's position. The fact that you have such a significant role with an organisation that the Council has entered into a contractual partnership with (this is the real point, it is a joint DA that has been signed for the benefit of both parties i.e. the people of Hitchin and surrounding area as well as the residents on the whole of North Hertfordshire, and your approach is out of kilter with true interpretation of the Localism Act and its modus operandi), means that your role as an elected Member is impacted. You and I need to work together to address that in terms of protecting your position and the Council's position.

Please do let me know if anything is unclear, or you have any queries. (I think I have covered it all)

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Whilst we are on the subject can you please advise my why, when the DCO was discussed in Part 2 of Full Council, did Lynda Needham not declare her interest with the Heritage Foundation who own the freehold. Is this listed on her DPI form? This decision was most important since in voting for the purchase, NHDC will then have a direct contractual relationship with the freeholder i.e. The Heritage Foundation.

David Leal-Bennett
Highway Works Section

From: Katie White [mailto:Katie.White@north-herts.gov.uk]
Sent: 27 September 2013 07:53
To: Cllr Leal-Bennett (external)
Cc: David Scholes
Subject: Disclosable Pecuniary Interests

Cllr Leal-Bennett,

I am writing further to our email exchange last week. I mentioned that I would need to come back to you with a considered response to your amended Notice of Disclosable Pecuniary Interests Form (DPI) and am now writing to do that.

In submitting the form as revised you are declaring that you no longer have a DPI in respect of Hitchin Town Hall Limited. Taking the form at face value, I have assumed that you have therefore ceased to be a Director of HTHL. Could you please confirm whether my assumption based on your submitted DPI form is correct, as the "Current Appointments Report" from Companies House relating to HTHL dated 17/9/13, states you were still a Director of HTHL as at that date. In addition I believe you are referred to as a Director in the Comet this week. I understand that you are a Trustee of HTHL as a registered charity, however the records at Companies House clearly show you to be a Director of HTHL as well. These are two distinct issues which need to be considered separately. Could you please clarify the current position?

Matters that form a DPI are set out in legislation, namely The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The Council's Code of Conduct attaches the DCLG description of DPI's to the Code as Appendix A, that reflects the content of the Regulations. In my view you currently have a DPI based on two of the seven categories that are set out in Appendix A. I have extracted these below and set them out with explanatory notes as to why they are relevant:

1. Employment, office, trade, profession or vocation

This includes any employment, office, trade, profession or vocation carried on for profit or gain, which you undertake. Your directorship for HTHL falls squarely within this category. Whilst the objectives of HTHL are clearly community focused, it is still a company, for which you appear to be a Director. Your role as a Director means that you have a DPI under this category.

2. Contracts

This category applies where a Member has a beneficial interest in a company that has an outstanding contract with the Authority. You have a beneficial interest in HTHL as a body corporate of which you are a Director (defined in the Regulations). There is a contract that exists between NHDC and HTHL that falls within the parameters, namely works are to be executed and the contract has not been fully discharged. This means that you also have a DPI under this category.

Based on these categories set out in the Regulations, my advice to you is that contrary to your current DPI form, if you are a Director of HTHL, you have a DPI that you must re-register. It is a criminal offence not to declare a DPI if you have one. It is important that we are able to have an appropriate dialogue on these matters, including where we have differing views and interpretation. However we do need to ensure that matters of governance are dealt with in accordance with the

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legislation and the mandate given by full Council in terms of the Members Code of Conduct. This is important to support the effective and lawful operation of the Council.

For future reference, if you have a DPI, you can not obviate the need to declare it by getting the consent of the Chair whether in writing or otherwise. The legislation and the Code do not provide for that. Your response below confirms that you did not declare a DPI at Hitchin Committee in June or July 2013 in relation to the Update Reports. However I am aware from the draft Minutes of Hitchin Committee on 10 September, that you declared an Interest, but then remained in the room and may have commented at the end of the agenda item to confirm the draw down of funds from ACF. This is contrary to the legislation.

Matters relating to your role as a Trustee of HTH are relevant as Declarable Interests rather than a DPI, and also need to be considered in detail. However for the purposes of this email I have focused on the issue of DPI's.

I am aware that you contacted The Rt Hon Peter Lilley MP, however that was in relation to matters of predetermination and bias. Whilst relevant to the general principles of good governance, the topic we are focusing on relates to the Members Code of Conduct and relevant legislative provisions which is a separate issue.

I appreciate that this is a very different position to your own view. I was therefore pleased to read that you are prepared to listen to my interpretation. I think it would be helpful for us to meet and discuss the points raised in this email, relating to DPI's and Declarable Interests. Could we therefore please arrange a time to meet, and I will ask David to join us as well. He is therefore copied into this email.

A few matters for completeness, I mentioned in my email that there would remain some in Hitchin who will be keeping a watchful eye on matters as they proceed. You asked for clarification. My reference is to members of the District (in Hitchin or elsewhere) who are less supportive of the Project for whatever reason, and may seek cause to challenge or criticise it. This does not help the legal position of the Council, the Council's reputation, or the smooth running of the Project. Separately I need to understand your relationship with Mountford Ltd to assess if similar issues are relevant. Finally, I note your enquiry about Cllr Needham, however I am not in a position to discuss another Member's situation with you. However please be assured that I will consider the points that you have raised.

Regards,

Katie White

Corporate Legal Manager and Monitoring Officer

From: David Leal-Bennett [<mailto:david@hitchinconservatives.co.uk>]
Sent: 12 November 2013 11:27
To: Katie White
Cc: David Scholes
Subject: RE: Disclosable Pecuniary Interest

Dear Ms White

I note your comments and interpretation below and have now researched this matter more fully.

Prior to this evening's meeting I would advise you that I shall declare my interest as a trustee/director of Hitchin Town Hall Ltd but shall not leave the room since I do not have a "disclosable pecuniary" interest.

CONFIDENTIAL EMAIL TRAIL re DPI

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I do not accept your interpretation of the DCLG description of DPIs in Appendix 'A', especially when reading the complete document which is about honesty, integrity and not benefitting from an 'interest'; none of these apply to myself, I am a trustee of a not for profit charity.

In fact I would suggest that in your enthusiasm for following the rules you have lost sight of the bigger picture and indeed have misrepresented the Localism Act. Whilst, in the past, I have questioned but complied with your interpretation, your continual correspondence and insistence has caused me considerable embarrassment, in effect, you have been questioning my integrity.

Furthermore you have set up a system at NHDC which only permits the declaration of a 'disoluble pecuniary' interest as the sole method of declaring an interest whereas there should also be a register of just 'Interests'. This latter register should cover all other aspects where councillors (are) a representative of NHDC, a members of an organisation or indeed a trustees such as the Workmans' Hall Trust.

As stated on previous occasions, should I attend any meeting where I consider there to be any conflict of interest then I will remove myself from the meeting.

I have now received your comment "In my view you currently have a DPI based on two of the seven categories that are set out in Appendix A." and advice, for that is what it is, and have chosen my own interpretation which differs.

Thank you for all your work; I consider the matter closed although I would suggest that you seriously think about setting up a register of "Interests".

David Leat-Barnett
Highbury Ward Councillor

12th November 2012

Note: Chairman, Hitchin Committee

Item 6 - North Hertfordshire Museum and Community Facility

Please be advised that I am declaring my interest as a trustee/director of Hitchin Town Hall Ltd (Registered Charity No. 1148921), a not for profit organisation.

I have been in considerable discussion with NHDC's Monitoring Officer and have received comments concerning her interpretation of the Localism Act; I am grateful for her advice which is exactly that 'advice', which differs from my own interpretation.

I do not propose to leave the meeting but assure you of my integrity and if at any time I consider there to be a conflict I will leave.

Cllr David Leal-Bennett

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