

CABINET
27 MARCH 2018

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

14

TITLE OF REPORT: FUTURE MANAGEMENT OF HITCHIN MARKET

REPORT OF THE DEPUTY CHIEF EXECUTIVE

EXECUTIVE MEMBER: EXECUTIVE MEMBER FOR FINANCE AND IT AND EXECUTIVE MEMBER FOR LEISURE

COUNCIL PRIORITY: ATTRACTIVE AND THRIVING / PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

1.1 This report is a follow up on the report to Full Council of 8 February 2018 regarding the opportunity of a potential regeneration of the Churchgate Centre and accompanying investment in the public realm and Hitchin Market. This report considers the future arrangements for the management of Hitchin Market as the current management contract ends on 31 July 2018.

2. RECOMMENDATIONS

2.1 That Cabinet defers a decision on whether to manage Hitchin market in-house until there is greater clarity on the deliverability of the proposals for the Churchgate Centre and Hitchin Market and further consideration has been given to the model for operating the market in-house.

2.2 That Cabinet authorises the Deputy Chief Executive, in consultation with the Head of Leisure and Environmental Services, the Executive Member for Finance and IT and the Executive Member for Leisure, to agree with Hitchin Markets Ltd the terms of an extension of their existing management contract in the short term.

3. REASONS FOR RECOMMENDATIONS

3.1 The Council has been seeking to regenerate the Churchgate Centre for a number of years and a number of different proposals have been considered during that time, with none of those proposals progressing to a successful conclusion. The proposal approved in principle by Full Council on 8 February 2018 finds a solution to a number of the problems faced by previous proposals and would appear to be achievable in the short term. The proposals would also see significant investment in Hitchin Market and the public realm and in order to be able to fully control that investment to ensure maximum transformative impact it is considered that the Council may wish to operate Hitchin Market in the short-term to deliver the transformation, before then considering potential future operating models. However there remain a number of uncertainties in relation to the deliverability of the regeneration proposals for the Churchgate Centre, Hitchin Market and public realm. Additionally further work needs to be undertaken to properly assess the way the Council could operate the market in-house in order for

Cabinet to make an informed decision. Therefore it is proposed to defer making a decision on the future management of the market and seek to agree an extension of the management contract with Hitchin Markets Ltd in the short, on terms to be agreed.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could extend the existing management contract with Hitchin Market Limited for a longer period, subject to ensuring compliance with the Council's Contract Procurement Rules. The existing management contract includes a break clause that allows the contract to end on three months notice for reason of redevelopment. Any extended contract would need to include the same clause. This option would however mean that the Council did not have full control over the market which could impact upon the deliverability of the investment which is intended to be truly transformative and ensure the market is fit for the 21st century.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Council has submitted a bid for funding for the market and public realm proposals to the Hertfordshire Local Enterprise Partnership (see section 8 below). At the time of writing this report the outcome of that bid is not known and a verbal update will be provided at the meeting if an update is available.
- 5.2 Officers met with Hitchin Market Ltd (HML) on 25 January 2018 and informed them of the proposals for the market and its management, as outlined in this report. At that meeting officers extended an invitation to HML to submit to the Council any alternative ideas they had. Hitchin Market Ltd presented to Full Council on 8 February 2018, highlighting some of the challenges facing the market and arguing that as HML had successfully operated in partnership with NHDC for nearly ten years they considered that they were best placed to continue this, under a different contract, for any development period. HML also presented to Hitchin Committee highlighting some concerns with the indicative plan provided to Full Council (size of market area, potential number of stalls and use of demountable stalls) and offering to continue to run the market on a rolling basis. Prior to the Hitchin Committee meeting officers extended the invitation to HML to submit any ideas they wished Cabinet to consider in this report. Officers met with representatives of HML on 12 March 2018 and discussed the points HML had made to Hitchin Committee. In short it was a positive and open discussion with quite a lot of agreement over the type of market Hitchin Market should seek to become and clear alignment on both parties motivation that there continue to be a vibrant market in Hitchin.
- 5.3 Full Council on 8 February 2018

RESOLVED:

(1) That the principle of a joint venture regeneration of the Churchgate Centre, with the Council as funder of the regeneration, be supported;

(2) That the Deputy Chief Executive, in consultation with the Chief Finance Officer, the Leader of the Council and Executive Member for Finance and IT, be authorised to progress negotiations with Shearer Property Group on the terms of a potential joint venture regeneration of the Churchgate Centre, subject to Full Council's final approval of the terms of any proposal; and

(3) That the proposal to allow the contract for the management of Hitchin Market to expire and for the market to be managed in-house, subject to Cabinet's approval, be noted.

REASON FOR DECISION: To progress the potential regeneration of the Churchgate Shopping Centre in Hitchin.

- 5.4 The Council will shortly be launching an online survey on people's use of the current shopping centre and market, what types of operators they would like to see if the regeneration goes ahead and whether they support the principle of regeneration. The survey will run for approximately one month and will be publicised to try to encourage a good rate of response. At this early stage, the Council is seeking the views of people who live and/or work in North Hertfordshire on the broad principles of the proposals in order to inform our thinking. There will be further opportunity for the public to comment on any scheme proposed in the future as things progress.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 19 January 2018.

7. BACKGROUND

- 7.1 The report to Full Council on 8 February 2018 sets out the full proposals for the regeneration of the Churchgate Centre and investment in the adjacent public realm and market. That report also provides a history of the project – see <http://web.north-herts.gov.uk/aksnherts/users/public/admin/kab12.pl?cmte=COU&meet=111&arc=71>
- 7.2 The Council report identified a number of challenges which have defeated previous attempts to produce a viable scheme for a regeneration, one of which was finding a suitable alternative provision for the market. Previous options considered included re-location of the market to one of Market Place, Portmill Lane West car park or St Mary's car park; different combinations of permanent/demountable stalls; and different combinations of indoor/outdoor market. It is fair to summarise that the previous developers found it difficult to find an acceptable solution. As Members will be aware the Council ceased work on the wider redevelopment scheme and therefore no conclusion was reached on the future provision of the Market.
- 7.3 Hitchin is an historic market town. On 8 April 2008 Cabinet made the decision to outsource the market operations, subject to negotiating suitable agreements with interested operators. The market rights are owned by the Council and it is currently managed by Hitchin Markets Limited. This arrangement started on 1 August 2008 and the management contract includes a break clause that allows the Council to terminate the arrangement (with no liability for costs) for reason of development of the Churchgate Shopping Centre, provided at least three months prior written notice is provided. This contract was initially for a five year term, with a further five year contract agreed in 2013. That second contract is due to expire on 31 July 2018 which provides a timely opportunity to consider the future management of the market, bearing in mind the regeneration proposals.
- 7.4 HML has been operating the market on an "as is" basis, with minimal opportunity for meaningful investment due to the nature of the operating model. As part of the arrangements an annual payment is paid to the Council. Without transformative investment in the infrastructure of the market it is difficult to see how the current situation can be improved and indeed future decline averted.

7.5 The Association for Public Service Excellence have recently undertaken a questionnaire to seek Local Authority's thoughts and experiences on insourcing. This demonstrated that Circa 73% have or are considering insourcing.

7.6 When asked what were/are the main reasons for insourcing, the top four reason given were:-

- Need to improve efficiency and reduce service cost
- Need to improve service quality
- Austerity budgeting / need to reduce spend on external contracts
- Need to have a more flexible service

8. RELEVANT CONSIDERATIONS

Proposals for Hitchin Market and the Public Realm

8.1 As stated in the Full Council report of 8 February 2018 one of the key challenges in attracting retailers is ensuring the surrounding environment is attractive and a vibrant space which supports the investment being made in the shopping centre. The market has been without significant investment for a number of years and there now exists an opportunity to invest in it in order to re-invigorate it and ensure it continues to meet the needs of the community going forward. The proposals being considered include investment in the market and surrounding public realm, with a new public space being created adjacent to the shopping centre and the market broadly in its current location, but with the core of it being at the Queen Street end of the current space. The proposal would include a mix of new stalls, both permanent and demountable, which could spread across the terrace below the St Mary's car park towards Portmill Lane, and could include a covered area over the permanent stalls. The indicative plan appended to the Council report shows a potential layout for stalls, but should not be taken as any indication of the potential number of stalls. The level of investment in the public realm and market is dependent on the cost and funding available.

8.2 In order to efficiently and effectively facilitate and manage the investment in the market there could be advantage in allowing the contract for the management of the market to expire, with the Council managing in-house the operation of the market in the short term both before and after the regeneration of it. Consideration will be given to the future management of the market as part of the ongoing assessment of the proposals and any in-house management would not preclude an outsourced arrangement, or other alternative arrangement, at any time in the future. In-house management of the market would of course mean that any direct surplus generated would be retained by the Council. Any surplus could provide a contribution towards the management and regeneration of the market.

8.3 There remain a number of key issues relating to an in-house management operation which need to be further investigated before Cabinet could take a fully informed decision. These include:-

- The consequences of potential TUPE of HML staff
- The line management arrangements for the market operation
- Concluding investigation of potential cost of in-house management
- The deliverability of the wider regeneration, which is subject to further detailed investigation
- Availability of funding for the market and public realm investment

Additionally consideration could still be given to any alternative proposals put forward by HML.

Funding

- 8.4 As explained in the Council report and section 5.1 above the Council has submitted a bid to the Hertfordshire Local Enterprise Partnership (LEP) for grant funding to cover the cost of the investment in the market and public realm. It is believed that the Council's bid meets all the LEP's requirements; however it is known that there are eighteen other bids that have been submitted. Outcomes of this bidding process will be known by the end of March 2018. If this application to the LEP is successful, the level of investment in the public realm and market requested would be transformative creating a vibrant space and would support the delivery of the shopping centre regeneration. If the bid is unsuccessful, or only partially successful, further work would need to be undertaken to consider potential alternative approaches. If the outcome of the bid is known by the time of the Cabinet meeting a verbal update will be provided.
- 8.5 Some Members at Full Council queried the mechanism for approval of the bid prior to its submission. The submission was in line with the requirements of the Council's Constitution which states at paragraph 14.6.4(a) *"The Chief Executive, the Deputy Chief Executive, Strategic Directors, Heads of Service and Corporate Managers are delegated the following functions, powers and duties for their respective service areas: [...] (ix) National Lottery and external funding applications."*

Conclusions

- 8.6 Given the uncertainties listed in paragraph 8.3 above it is premature to make a decision on the management of the market at this time. Given the likely timescales required for further clarity to be obtained on those matters it makes sense to seek to agree with HML an extension of the existing management contract in the short term, on terms to be agreed. It is proposed to delegate responsibility for agreeing the terms of the extension, in order to ensure the terms can be agreed in a timely manner prior to the expiry of the contract on 31 July 2018. If terms for the extension cannot be agreed, which seems unlikely based on discussions with HML to date, then a further report would need to come back to Cabinet before 31 July 2018. In any event a further report will be presented to Cabinet at an appropriate point to consider arrangements for the management of the market once the future of the regeneration proposals is known.

9. LEGAL IMPLICATIONS

- 9.1 The responsibility for the decision on the arrangements for the management of Hitchin Market lies with the Executive. As stated in paragraph 7.3 above Cabinet made the decision to outsource the market operations, subject to negotiating suitable agreements with interested operators. Given the nature of the options on the table and the profile of the Churchgate Centre regeneration it was considered that the most appropriate approach was to report to Cabinet, rather than seek a decision under delegated authority to extend the contract in the short term.
- 9.2 If the Cabinet is asked at a later date to agree to the market being operated in-house the legal implications of that will need to be considered as part of the further work undertaken. In particular this would include the TUPE implications of transferring existing staff from HML to the Council. Any investment in the market would need to comply with the usual procurement and contract requirements, plus conditions

attached to any external funding. If required specific external legal advice will be obtained.

10. FINANCIAL IMPLICATIONS

- 10.1 A budget of £52,500 previously allocated by Full Council for investigating alternative proposals for the Churchgate Centre has been carried forward from previous years. Up to £15,000 of this has been allocated for development consultancy support for the current proposals and it is proposed that the remainder be used for any further specialist advice required.
- 10.2 The Council currently receives a contribution of £24k (exc VAT) per year from HML in relation to running the market. This provides a contribution towards the management of the service and wider town centre maintenance costs and regeneration.

11. RISK IMPLICATIONS

- 11.1 Some of the key risks to the progress of the regeneration proposals are set out in the Council report of 8 February 2018. As part of the LEP bidding process an initial risk log has been created for the wider proposals, which identifies 22 potential risks, their consequences and mitigating action required. This risk log will be developed as formal project management arrangements are considered. If the wider proposals move forward then the project is likely to be proposed as a Top Risk which is then monitored by Finance, Audit and Risk Committee and Cabinet as part of the Council's risk management policy.
- 11.2 Paragraph 8.3 outlines a number of issues which are specific to the insourcing of the market, these are also risks and need to be fully explored before a decision can be made regarding the future management arrangements of the market.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. To ensure the Council complies with the Public Sector Equality Duty the Council will undertake an equalities impact assessment if the Council decides to insource the market.
- 12.2 Involvement and consultation are crucial to the equality analysis process. By seeking views of those most affected, then both positive and adverse impacts can be collated and inform any future schemes.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report due to the nature of the decisions Full Council is being asked to make.
- 13.2 However, any decision Council may make in the future with regard to the regeneration of Churchgate which could, either in whole or part, constitute a public service contract would need to report on the social value implications of each/any option at the time of consideration. This would, in brief, consider how every £1 spent could best be spent to benefit the local community, which may include award of some aspects of redevelopment or management of the centre etc. by local social enterprises, a contractor offering an apprentice scheme or similar.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The current work undertaken to this point has been met from existing resources, with additional external development consultancy expertise sought to support internal skills and knowledge. An internal team of officers including financial, legal, planning and technical expertise has been identified to support the Deputy Chief Executive. The ongoing resourcing requirements will be considered as part of the next phase of work and can be factored into service plans for 2018/19. Additionally the internal resourcing will be considered in the light of any changing responsibilities as a result of the senior management restructure.
- 14.2 The Council has a Transfer of Undertakings Protection of Employment (TUPE) policy which sets out the rights an employee can expect when North Hertfordshire District Council is considering a transfer of service or business function into or out of the Council and between external contractors. TUPE implications need to be assessed on a case by case basis and guidance from HR, Legal and Procurement should always be sought where TUPE applies.

15. APPENDICES

- 15.1 None.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 Reports on previous Churchgate proposals to Full Council dated 31 January 2013 and 11 February 2016.
- 17.2 Report to Full Council dated 8 February 2018.