

**CABINET
19 JUNE 2018**

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

12

**TITLE OF REPORT: NORTH HERTFORDSHIRE MUSEUM & HITCHIN TOWN HALL:
ACQUISITION OF 14/15 BRAND STREET**

REPORT OF : THE CHIEF EXECUTIVE & SERVICE DIRECTOR - COMMERCIAL
EXECUTIVE MEMBER : COMMUNITY ENGAGEMENT & RURAL AFFAIRS
COUNCIL PRIORITY : RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

The purpose of this report is to further advise Cabinet of the progress of discussions for the acquisition of 14 and 15 Brand Street from Hitchin Town Hall Ltd (HTHL). Such an acquisition would allow the building to operate as intended by the Council in an integrated way for the local community following the withdrawal of funding to HTHL from the Social Investment Business (SIB).

2. RECOMMENDATIONS

- 2.1 That Cabinet notes the current position in relation to the negotiations and confirms its continued preference is for a negotiated resolution.
- 2.2 That Cabinet notes the progress on the potential alternative options as detailed in this report to enable the museum to open fully.
- 2.3 That Cabinet recommends to Council that an initial in principle resolution be made to acquire the former 14/15 Brand Street, Hitchin by Compulsory Purchase in the event that the negotiations do not enable an agreed purchase to be concluded.
- 2.4 That Cabinet note that approval of some elements of any settlement agreement may be required from the Cabinet Sub-Committee (Council Charities).

3. REASONS FOR RECOMMENDATIONS

- 3.1 To enable the Council to complete the development of the North Hertfordshire Museum/Hitchin Town Hall project as intended by Council and operate the facility for the benefit of the local community.
- 3.2 To protect the Council's interests and obtain best return from the Council's existing investment and to secure projected income from the facility to offset some of the operational and fixed costs.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The options to open the facility without occupancy of 14/15 Brand Street has been fully investigated and a number of options are available to the Council. Whilst the preferred option is through the agreed acquisition of land formerly known as 14/15 Brand Street this has not yet proved possible on terms agreeable to the Council despite over 19 months of negotiation. A costed options appraisal considering a number of scenarios for the occupation of the land which the Council currently owns has also been undertaken to guide the commercially confidential negotiations. The potential compulsory purchase of the properties known as 14/15 Brand Street is an option and could be pursued in parallel with the negotiations however at this point in time this is not being recommended as the negotiations are progressing..
- 4.2 Relatively limited alterations involving the installation of a platform lift in the entrance to the town hall would increase accessibility to the first floor in the town hall and allow officer to explore ways of opening the terrace gallery. Although the alterations would not facilitate access to the planned education rooms the platform lift would improve accessibility following the acquisition of 14/15 Brand Street and in fact was planned by HTHL and incorporated in their application for listed building consent. As such these alterations could be made relatively swiftly, enabling the museum to open fully to the public at ground and first floor. Notwithstanding the progress of the negotiations (the Council's preferred solution) it is proposed that the additional lift option be progressed as a matter of priority as this will facilitate improved access across the building irrespective of the resolution of ownership issues.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 Consultation on the general parameters for seeking to acquire 14/15 Brand Street as authorised by Full Council on 20 January 2016 has been on going with Executive Members prior to engaging in discussions with HTHL and HTH Finance Ltd and throughout those discussions.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision, which has been notified to the public in the Forward Plan on 28 February 2018.

7. BACKGROUND

- 7.1. The decision making history in relation to this project is extensive and has been reported to both Council and Cabinet on a number of occasions. The reports are available on the website (<https://www.north-herts.gov.uk/home/museums/north-hertfordshire-museum-and-hitchin-town-hall/hitchin-town-hall-museum-proposals>). Appendix A provides details of the project expenditure and funding.
- 7.2. It should be noted that Council has approved in principle the acquisition of 14/ 15 Brand Street to allow the project to be completed in line with the original plans.
- 7.3. Discussions have taken place in the latter part of 2016 and throughout 2017 and 2018 with HTHL and HTH Finance Ltd and it has been made very clear that in order to make a bid for the property the Chief Finance (s151) Officer would need to ensure that it was offering value for money to the Council Tax payer. Given that the agreed amount was considered to be at full market value, this meant that any conditions attached to the

purchase could not be too onerous. This approach has also been confirmed with the Council's External Auditor. A meeting took place on the 2nd February between the Council's representative Mr Dave Fergus (a consultant of the East of England Local Government Association) and HTHL and HTHF and there have been various conference calls/emails since that meeting seeking to resolve the matters where the parties disagree. Matters which are commercially confidential are referenced in the Part 2 report to Cabinet.

8. RELEVANT CONSIDERATIONS

- 8.1 Whilst HTHL and HTHF have asserted in correspondence that they now have no objections to negotiations taking place in public, the fiduciary duty placed upon the Council means that where matters are commercially or legally confidential then they are treated in such a manner. The Part 2 report details the current position in relation in relation to the remaining points of difference between the parties.
- 8.2 At the time of this writing this report negotiations are on-going and a significant number of matters have been resolved. A further update will be provided at the Cabinet meeting and it must be stressed that the Council's preferred option is a negotiated settlement
- 8.3 In the event that a negotiated settlement does not prove possible specialist legal advice has been received in relation to the acquisition of the properties known as 14/15 Brand Street, Hitchin by Compulsory Purchase (CPO). That advice supports the Council's view that acquisition via this mechanism accords with the relevant CPO legislation. Given the progress of negotiations it may be appropriate to consider an "in principle decision" is sought from Council. This in itself would not prevent an agreed purchase taking place in the event that negotiations proceed to a positive conclusion. Acquisition by CPO may take a year or so (in the event that the draft Order is contested) though that needs to be assessed against the timescales that the negotiations have taken so far.
- 8.4 In order for the museum to function with improved disabled access to the first floor it is recommended that a platform lift be installed in the town hall (as provided for in the listed building consent – but not implemented). This would be undertaken irrespective of the resolution of 14/15 acquisition as it facilitates access more generally to the first floor.

9. LEGAL IMPLICATIONS

- 9.1 The general power of competence contained within the Localism Act 2011 came into force on 18th February 2012 and effectively replaced the previous wellbeing powers. The statutory General Power of Competence gives a local authority the power to do "anything that individuals generally may do". Section 1 (4) of the same Act confirms that using such power the local authority may do so for the benefit of the Authority, its area or persons resident in the area.
- 9.2 The Authority has power under Section 144 of the Local Government Act 1972 to provide or encourage any other person or body to provide, facilities to encourage visitors, for conferences, trade fairs and exhibitions or improve or encourage any other person or body to do so for any existing facilities. It has powers under Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 to provide recreational facilities, buildings, equipment to the extent that these do not cover the current proposals that the general Power of Competence referred to in section 9.1 can be relied upon.

- 9.3 The Council is currently in an ongoing contractual dispute with HTHL in respect of the project and statutory demands have been lodged with HTHL seeking payment of monies owed to the Council. In the event of agreement being reached for the purchase of 14/15 Brand Street from HTHL to enable them to repay their debt to HTH Finance Ltd, it is almost inevitable that these sums will have to be written off. However any agreement for purchase will include that there will be no legal claims brought by either party against the other, thereby avoiding potentially protracted (and therefore expensive) litigation. It is important that any settlement agreement is comprehensive and ensures all potential elements of claim, by any party, are covered.
- 9.4 Paragraph 5.6.20 of the Council's Constitution provides that Cabinet's terms of reference include "to approve the purchase or appropriation of land and buildings where the sale price...exceeds £250,000 and does not exceed £2,500,000."
- 9.5 The Council has various powers under the Local Government Act 1972 and the Planning Act to compulsorily acquire land or buildings under Compulsory Purchase Powers. Initial consideration has been given to the circumstances that exist in relation to the delivery of a scheme that has the benefit of planning permission (and indeed has been constructed pursuant to the Development Agreement between the Council and HTHL). In such circumstances it would appear that such an approach is supportable.

10. FINANCIAL IMPLICATIONS

- 10.1 Prior to consideration of the developments described in the body of the report the Council's total capital expenditure on this project stood at £5.329m of which £0.874m is funded by the contribution from the Heritage Lottery Fund towards the fit out of the Museum.
- 10.2 A decision not to acquire 14/15 Brand Street would provide a compromised offer to the public and would restrict the full income generation prospects of the building. As it seemed possible to acquire 14/15 Brand Street for a similar amount to the cost of the most operationally desirable separation works, resulting in the Council owning a building with service provision as originally envisaged and with greater income generation opportunities, this would seem to offer better value for money to Council tax-payers. Given the difficult progression of negotiations and in the event that acquisition by private treaty does not prove possible the use of compulsory purchase powers to acquire the property is now proposed whilst not precluding an agreed purchase. In either of these circumstances the Council would also have a property with an enhanced asset value.
- 10.3 The alternative approach of modifying the building to allow access are referenced in the report and it is proposed to carry out limited physical alterations alongside an acquisition process. The estimated cost of the platform lift is approximately £20k. Under the financial regulations "the Executive Member for Finance and IT can approve in year changes to the Capital Programme up to a limit of £100,000 per project".
- 10.4 The Council's external auditor has been kept aware of negotiations as they have progressed.

11. RISK IMPLICATIONS

- 11.1 The risk implications arising from this report are largely:

- Financial – further delay in opening or not being able to open the facility or prevent achievement in the forecasted income, failure to obtain best return from the existing capital investment and would mean that existing museum staff may not be fully utilised. The operation of the town hall may also be compromised because of the difficulties in access (particularly to the first floor) to staff and members of the public.
- Operational – uncertainty concerning full opening inhibiting marketing.

11.2 The North Hertfordshire Museum and Hitchin Town Hall Project is a corporate risk and this is monitored through the Finance Audit and Risk Committee. In addition there is a detailed project risk log that is monitored and discussed by project board.

11.3 Failure to reach agreement with HTHL is likely to result in litigation brought by either the Council, or HTHL, or both. Such litigation is likely to be complex, protracted and expensive and would divert Council resources away from undertaking other activities.

12. EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2 that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 The proposals made in this report do not in themselves alter the overall project design as previously reported, but seek to ensure that in ensuring momentum to the existing contracts etc, a facility to meet the needs of all communities in North Herts can be completed and brought into community use. The report also suggests consideration of management arrangements for the facility which will be subject to the Public Sector Equality Duty. With or without the footprint of 14/15 Brand Street the new facility will enhance the experience for all visitors, including those with disabilities, although it is accepted that the building as originally designed with the footprint of 14/15 Brand Street would provide the optimum solution.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do not yet constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12. Any individual award of a public service contract which may arise following subsequent review of the Council's operation of the hall over the next two/three years will be evaluated in terms of its social value through the Council's agreed procurement processes.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The Human Resources implications arising from this report are associated with the significant additional workload on the Senior Officers and Project Team Members and the need to recruit, train and manage a staff team to operate the Museum and Town

Hall facilities. This is currently mitigated by the reallocation of resources from less time sensitive projects but this situation cannot be sustained.

- 14.2 The demands of this project have required the deployment of Senior Managers and Project Support staff to the Hitchin Town Hall project to develop alternative options and to minimise risk. The additional time having to be committed to this project including that of Chief Officers has created pressures and delays on other important work programmes elsewhere.
- 14.3 The current uncertainty will be of concern particularly with the Museum staff with the ongoing delay in the full opening of the Museum.

15. APPENDICES

None.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

Project history and reports at:
<https://www.north-herts.gov.uk/home/museums/north-hertfordshire-museum-and-hitchin-town-hall/hitchin-town-hall-museum-proposals>