

**CABINET  
25 SEPTEMBER 2018**

**\*PART 1 – PUBLIC DOCUMENT**

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

REPORT OF THE DEPUTY CHIEF EXECUTIVE  
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). At the time of writing this report, Officers were still waiting for a response from HTHL and Hitchin Town Hall Finance Ltd (HTHF). The absence of this response means that this report presents a number of potential options.

**2. RECOMMENDATIONS**

- 2.1 That Cabinet notes the current position in relation to the negotiations.
- 2.2 That Cabinet indicates its preferred approach in relation to next steps.
- 2.3 That Cabinet note that some options may require comment and approval 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. The preferred option has previously been agreed to be the acquisition of land formerly known as 14/15 Brand Street, but this has not yet proved possible on terms agreeable to the Council despite almost two years 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 also be pursued.

#### **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 HTHF 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 August 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, subject to the financial limits as set out in the Council's Constitution.
- 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 it would need to include provisions to resolve the current dispute and that any conditions attached to the purchase could not be too onerous. This approach has also been confirmed with the Council's External Auditor.

- 7.4. At the meeting of Cabinet on 19<sup>th</sup> June 2018, a deadline of 31<sup>st</sup> July 2018 was set for an agreed purchase to be concluded by. Any proposal from the Council at that date would remain on the table for agreement by HTHL/ HTHF.

## **8. RELEVANT CONSIDERATIONS**

- 8.1 A meeting took place on the 2<sup>nd</sup> February 2018 between the Council's representative Mr Dave Fergus (a consultant engaged through the East of England Local Government Association) and HTHL and HTHF and there were various phone calls and emails after that meeting seeking to resolve the matters where the parties disagreed. This culminated in an e-mail from HTHL and HTHF on the 27<sup>th</sup> July where it seemed that the majority of the substantive points had been agreed. The Council provided a response back on these remaining points on the same day with the hope that the two remaining points could be clarified and agreed. Following some further correspondence, on the 7<sup>th</sup> August HTHL/HTHF stated that they agreed with all the points except for one where they wanted to propose a tweak to the wording. HTHL/HTHF would therefore meet with their lawyers and come back with a final draft of the settlement agreement. Officers have asked Mr Fergus to make it clear in our correspondence since then that time is of the essence. Although negotiations have not continued beyond the 31<sup>st</sup> July, it is clear that this deadline was also set to bring this matter to a final resolution as soon as possible. HTHL/ HTHF have confirmed that it took until 7<sup>th</sup> September to meet with their lawyer. At the time of writing this report (13<sup>th</sup> September) they have not been able to provide a copy of the promised settlement agreement, or even confirm when it might be available. It is hoped that an update can be provided to the meeting.
- 8.2 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. Therefore the details of the content of the negotiations described in paragraph 8.1 above are detailed in the part 2 report.
- 8.3 Given the uncertainty over the timing and the content of the response back from HTHL/HTHF there are a number of potential scenarios. As it might be possible to provide an update at the meeting and to keep this moving towards a resolution, the most likely scenarios and resultant implications are described in the following paragraphs.

### **Scenario 1- Settlement proposal received from HTHL/HTHF by the Cabinet meeting that fully meets the key requirements**

- 8.4 HTHL are required to get approval for the settlement agreement from the majority of their shareholders. To achieve this, they plan on calling an Extraordinary General Meeting (EGM) and have indicated a potential date of 30<sup>th</sup> October 2018.

- 8.5 If approved by the shareholders of HTHL, the proposed deal will then be subject to approval by Cabinet. There are a number of options as to when this Cabinet meeting could take place, with a balance between getting a resolution as quickly as possible and being able to provide a report that accurately reflects the decision that Cabinet is being asked to take. The options available are:
- Cabinet date very soon after the date of the EGM (meeting between 31<sup>st</sup> October and 8<sup>th</sup> November) - the report to Cabinet would have to be written on the assumption that the EGM would accept the settlement agreement.
  - Cabinet date set so that reports are published soon after the date of the EGM (meeting w/c 12<sup>th</sup> November) - gives a small amount of time for the report to reflect the outcomes of the EGM and any consequential impacts on the decision being taken.
  - Cabinet date not set until the outcome of the EGM is known (meeting likely to be w/c 19<sup>th</sup> November or later) - the report can fully reflect the decision being taken.
- 8.6 As well as approval by Cabinet, the proposed deal will also be subject to consideration by the Cabinet Sub-Committee (Council Charities). This is because this decision would have an impact on the operation of current (Hitchin Town Hall Gymnasium and Workman's Hall) and proposed Trust assets. The original development agreement would have seen the property at 14/15 Brand Street being gifted to the Trust. The expenditure that the Council will now incur in acquiring 14/15 Brand Street means that it now intends on keeping the property and not gifting it to the Trust. This is so that the income is retained to balance the impact on the local taxpayer. However the Trust is now in a significantly better position than it was at the start of the project in that it would have a modern museum operating from the buildings that it holds. Potentially the Cabinet Sub-committee could meet on the same day as Cabinet.
- 8.7 If all of the above approvals are in place then the settlement agreement can be signed and the property purchase can take place.

**Scenario 2- Settlement proposal received from HTHL/HTHF by the Cabinet meeting that substantially meets the key requirements**

- 8.8 Given that HTHL/HTHF have stated that they want to propose a tweak to some wording, it is possible that the draft settlement could substantially (but not fully) meet the key requirements set out by Officers. Under this scenario, Cabinet could choose to extend the deadline for negotiations. If these negotiations were then successful, this could then allow scenario 1 to be followed, although possibly with slightly different timings. Otherwise the factors under scenario 4 would become relevant.

**Scenario 3- Settlement proposal not received from HTHL/HTHF by the Cabinet meeting**

- 8.9 Under this scenario, Cabinet could set a further deadline by when a response must be received. However, given that negotiations have been ongoing since 2016, Cabinet could take a view that this process has already taken too long, in which case the factors under scenario 4 would become relevant.

#### **Scenario 4- Negotiated settlement not seen as being possible within a reasonable timeframe**

- 8.10 This would cover a range of circumstances and could depend on Cabinet's view of a reasonable timeframe. Cabinet could take a view that a reasonable timeframe has already elapsed. Cabinet agreed at their meeting on 19<sup>th</sup> June 2018 that the alternative to a negotiated solution was to recommend to Council "to agree an initial, in principle, resolution to acquire the former 14/15 Brand Street, Hitchin by Compulsory Purchase". As has been reported previously, 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. Therefore, this recommendation could now be taken to the next scheduled meeting of Full Council on 22<sup>nd</sup> November, or to a Special meeting of Full Council prior to that.
- 8.11 Alongside this, Cabinet may want to consider the status of the current offer. Whilst an amount of money has been agreed with HTHL/HTHF, there is still not an agreed settlement agreement. Cabinet could consider the focus should now be on the Compulsory Purchase process. Any use of CPO powers will require the Council to remain open to a settlement via negotiation alongside the CPO process

#### **9. LEGAL IMPLICATIONS**

- 9.1 The general power of competence contained within the Localism Act 2011 came into force on 18<sup>th</sup> 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, this will include a provision for these sums 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 powers to acquire land under s120 of the Local Government Act 1972 and to compulsorily acquire land or buildings under the Town and Country Planning Act 1990 (amongst other legislation). 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. Following the Cabinet meeting in June, the Leader of the Council took a delegated decision (dated 17<sup>th</sup> July 2018) to allocate £20k of capital funding for the installation of a platform lift. The currently agreed purchase price for 14/15 Brand Street is £550k (agreed by Cabinet at its meeting on 18<sup>th</sup> March 2017), although as detailed in paragraph 7.3, this amount is contingent on a resolution to the current dispute and that any conditions attached to the purchase are not too onerous.
- 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 seems 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 local taxpayers.
- 10.3 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 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> 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.

### **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. 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 temporary transfer 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>