

**CABINET SUB-COMMITTEE (COUNCIL CHARITIES)
20 NOVEMBER 2018**

PART 1 – PUBLIC DOCUMENT

**TITLE OF REPORT: NORTH HERTFORDSHIRE MUSEUM & HITCHIN TOWN HALL:
COUNCIL PROPOSALS TO ACQUIRE 14/15 BRAND STREET**

REPORT OF : SERVICE DIRECTOR: CUSTOMERS

COUNCIL PRIORITY : RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

To update the Cabinet Sub-Committee on the Council proposals in relation to the North Hertfordshire Museum & Hitchin Town Hall including the land owned by the Hitchin Town Hall Gymnasium and Workman's Hall Trust.

2. RECOMMENDATIONS

That the Charities Sub-Committee:

- 2.1 Notes the proposal for the Council to acquire 14/15 Brand Street for a purchase price of £550,000.00
- 2.2 Confirms that it has no objections to the settlement agreement referred to in this report.
- 2.3 Authorises the Council to execute the settlement agreement on behalf of the Trust.
- 2.4 Delegates to the Service Director - Customers in consultation with the Trust Lawyer and the Chairman of the sub-committee authority to review the management agreement entered into between the Hitchin Town Hall Gymnasium and Workmans Hall Trust and the Council and to make any minor amendments to take account of the settlement agreement in the event that it is completed

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure that the charitable requirements of the Trust are met in respect of the Council's proposal to enter into the settlement agreement.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The alternative options are considered in the body of this report.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 There has been no consultation in respect of the recommendations in this report.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

7.1 Part of the District Museum and Hitchin Town Hall is held by the Council as trustee for the Hitchin Town Hall Gymnasium and Workmans Hall Trust ('the Trust'). That part of the building ('the Trust Property') is managed by the Council under the terms of a management agreement entered into between the Council and the Trust following Sub-Committee approval of the agreement on 27 July 2010

7.2 On 22 May 2012 the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) considered the proposed scheme for the development of Hitchin Town Hall and District Museum and assessed the impact of the scheme on the Trust Property. As members are aware the development then proceeded and was governed by a development agreement between the Council and Hitchin Town Hall Limited. At its meeting of 22 May 2012, the Sub-Committee authorised the Council to execute the development agreement on behalf of the Trust.

7.3 On 9 October 2012 the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) considered further information in respect of the legal agreements relating to the scheme.

7.4 Revisions to the development agreement were subsequently brought forward and on 22 April 2013 the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) authorised the Council to execute any necessary amendment to the development agreement on behalf of the Trust to give effect to the revisions.

7.5 Following the resolutions of the Cabinet Sub-Committee noted above, a further development agreement was entered into on 9 September 2013 between the Council and Hitchin Town Hall Limited ('the Development Agreement') and this stated:

"The Trust, acting by the Council as Sole Trustee, enters into this Agreement pursuant to the decisions of the Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) made on 22 May 2012, 9 October 2012 and 23rd April 2013"

7.6 In broad terms the effect of the Development Agreement insofar as the Trust is concerned was:

- To permit the Council to develop the Trust Property;
- Conditional upon completion of the development as envisaged by the Development Agreement, to accept from Hitchin Town Hall Limited the land formerly known as 14/15 Brand Street ('14/15 Brand Street') for nil consideration; and
- Conditional upon completion of the development as envisaged by the Development Agreement, to permit the Council to let part of the Trust Property to Hitchin Town Hall Limited and to enter into an associated management agreement which would bind the Trust Property.

7.7 The Cabinet Sub-Committee (Hitchin Town Hall Gymnasium and Workman's Hall Trust) was decommissioned on 31 December 2013 and the Cabinet Sub-Committee (Council Charities) is now empowered to act on behalf of the Council as Corporate Trustee for all assets of the Council that are held on a charitable trust.

7.8 Members of the Sub-Committee will be aware from the Annual Report of the Trust that during the course of the development, there was a breakdown in the relationship between the Council and Hitchin Town Hall Limited ('HTHL') meaning that the development was not completed as envisaged by the Development Agreement. The property formerly known as 14/15 Brand Street is now incorporated into the District Museum and Hitchin Town Hall, but remains within the ownership of HTHL and subject to a charge in favour of Hitchin Town Hall Finance Limited ('HTHF')

7.9 The result of the present ownership arrangements is that what was intended to be the entrance to the new museum cannot currently be used. Furthermore, this also restricts access to certain rooms within the Trust Property, which require access over the former 14/15 Brand Street to gain entry. There is an alternative access point, which is being used to gain entry to the Trust Property and therefore the new museum.

8. RELEVANT CONSIDERATIONS

8.1 A Part 1 report to be presented to Cabinet on 20th November 2018 together with appendices (including the proposed settlement agreement) are supplied with this report as information for Members of the Sub-Committee. The report proposes that the Council enters into the settlement agreement. Members will note that a linked Part 2 report is to be presented to this Sub-Committee on this item to enable consideration of the Part 2 report which will be presented to Cabinet.

8.2 The settlement agreement addresses a number of issues namely it:

- Operates as a contract between the Council and HTHL for the purchase of 14/15 Brand Street; and
- Terminates the Development Agreement; and
- Binds the Council's future ownership and use of both the part of the District Museum and Hitchin Town Hall registered to the Council under title number HD488762 ('the Council's Land') and 14/15 Brand Street in the manner set out in the agreement.

- 8.3 In considering whether it has any objections to the proposed settlement agreement, the Cabinet Sub-Committee (Council's Charities) must take into account the Trust's Charitable Objectives which relate to the Trust Property and are:

"Upon trust to use or permit it to be used as a Gym for the benefit of the residents of Hitchin and for other purposes mentioned in s6(3) Museums and Gymnasiums Act 1891 and also for any other (charitable) purpose for the benefit of the North Hertfordshire District for which North Hertfordshire District Council can lawfully use building and land vested in them".

- 8.4 The Cabinet Sub-Committee (Council's Charities) must also have regard to the public benefit requirement, namely the duty of the charity trustees to further the purpose of the charity for the public benefit. In this regard, the Sub-Committee is required to have regard to the Charity Commission guidance on public benefit, which is set out in this report where relevant.

Council's purchase of 14/15 Brand Street

- 8.5 The proposal for the Council to purchase 14/15 Brand Street is not a matter that requires direct consideration by this Cabinet Sub-Committee. The Council is proposing to purchase the property with its own funds and the terms of that purchase may therefore be agreed between the Council and HTHL as the seller.
- 8.6 Clearly in order to sell 14/15 Brand Street to the Council, HTHL must be free from any obligation to transfer the property to the Trust, however that outcome is linked to the termination of the Development Agreement, rather than the Council's purchase of the property.
- 8.7 The Council's acquisition of 14/15 Brand Street is also relevant to the Trust insofar as the Council would be able to use the property in conjunction with the Trust Property to provide a unified District Museum. Therefore in considering the effect on the Trust of the termination of the Development Agreement, members of the Cabinet Sub-Committee may take into account that an intrinsic element of the settlement is the Council's acquisition of 14/15 Brand Street.

Termination of the Development Agreement

- 8.8 The relevance to the Trust of the termination of the Development Agreement can be considered by reference to the three intended effects of the Development Agreement as set out in paragraph 7.8 of this report.

Development of the Trust Property

- 8.9 Despite the dispute in connection with the Development Agreement, the Council progressed the overall development of the District Museum and has completed the refurbishment insofar as it relates to the Trust Property. The Trust Property is now fully refurbished as a working museum, with limited opening to the public at the moment because of the restricted access. It is ready for full opening as soon as the access questions have been resolved. The Development Agreement is therefore no longer required to achieve this outcome.

Transfer of 14/15 Brand Street

- 8.10 As is highlighted earlier in this report, the proposed transfer of 14/15 to the Trust was conditional on the other obligations set out in the Development Agreement being met by all parties. Due to the dispute between the Council and HTHL, the pre-conditions in the Development Agreement relating to the transfer have not occurred, meaning that the legal obligation on HTHL to transfer the property to the Trust has not arisen.

Lease of part of the Trust Property to HTHL

- 8.11 Equally, the pre-conditions in the Development Agreement relating to the proposed lease of Trust Property (together with Council Land) to HTHL have not occurred. There is therefore no legal obligation on the Council to grant such a lease. However if the settlement agreement were to be completed, this would confirm the termination of the relevant provisions in the Development Agreement and would clarify the position.

Council's future use of 14/15 Brand Street and the Council's Land

- 8.12 The settlement agreement places a rolling 5 year obligation on the Council to retain the Council's Land and 14/15 Brand Street for the community purpose defined in the agreement. This obligation does not affect the Trust Property and so this element of the settlement agreement does not require direct consideration by the Trust.

- 8.13 As can be seen from the analysis in paragraphs 8.3-8.10 of this report, the main effect of the settlement agreement from the Trust's perspective will be to conclusively terminate the Development Agreement proposals for 14/15 Brand Street to be transferred to the Trust, and for the proposals for the Trust Property to be let to HTHL.

- 8.14 Notionally, it might be argued that the Trust could reject the settlement agreement and attempt to enforce the obligations on the parties in order to gain ownership of 14/15 Brand Street. However in reality that would be entirely impractical and it is not an available option for the following reasons:

- The Trust does not have the financial resources with which to pursue any enforcement action;
- 14/15 Brand Street is subject to a legal charge and any enforcement action would be complicated by the rights of the beneficiary of the legal charge;
- The Council being the corporate trustee of the Trust could not take legal action against itself.

- 8.15 In any event, if the Trust was able in some way to enforce the obligations on the parties under the Development Agreement, then this would require the Council to lease part of the Trust Property to HTHL for nil consideration (as originally envisaged by the Development Agreement).

- 8.16 It is arguable that completion of the settlement agreement will help to further the Trust's Charitable Objectives for the public benefit. The public benefit requirement has two aspects:

The 'benefit aspect'

To satisfy this aspect:

- a purpose must be beneficial - this must be in a way that is identifiable and capable of being proved by evidence where necessary and which is not based on personal views

- any detriment or harm that results from the purpose (to people, property or the environment) must not outweigh the benefit - this is also based on evidence and not on personal views

The 'public aspect'

To satisfy this aspect the purpose must:

- benefit the public in general, or a sufficient section of the public - what is a 'sufficient section of the public' varies from purpose to purpose
- not give rise to more than incidental personal benefit - personal benefit is 'incidental' where (having regard both to its nature and to its amount) it is a necessary result or by-product of carrying out the purpose

8.17 Completion of the settlement agreement and the consequential unification of the building including access to the whole of the Trust Property will further the Trust Objectives of permitting the Trust Property to be used for any other (charitable) purpose. Presently the local studies room and upper floor accommodation which fall on the Trust Property are not in use. If the settlement agreement is completed and the Council acquires 14/15 Brand Street, the Trust Property could then be used by local groups and higher education students as a study area, as a meeting room by local community groups, for craft activities and for pop up community services. These types of use would fulfil the following charitable purposes:

- the advancement of education
- the advancement of citizenship or community development
- the advancement of the arts, culture, heritage or science

8.18 In considering this against the public benefit test:

The benefit aspect

8.18.1 Charity commission guidance states that '*When running a charity, the charity trustees do not have repeatedly to demonstrate that the purpose continues to satisfy the benefit aspect of the public benefit requirement*'. Therefore on the basis that the development of the District Museum was determined to be of public benefit as it would lead to the use of the Trust Property for these purposes, it is not necessary to re-establish the public benefit. It is not considered that there is any real or evidenced detriment or harm to the proposal.

The public aspect

8.18.2 The Trust Property would be available for use by the residents of North Hertfordshire and this is considered to be a sufficient section of the public to meet the 'public aspect' part of the public benefit requirement. To the extent that either the Council or HTHL benefit from the completion of the settlement agreement, this is incidental to the overall proposal.

- 8.19 In the event that the settlement agreement is completed, it will be necessary to review the management agreement entered into between the Hitchin Town Hall Gymnasium and Workmans Hall Trust and the Council. At the time of entering into the management agreement, it was envisaged that the development would be completed in accordance with the Development Agreement. The management agreement therefore refers to the potential for the Trust Property to be operated and managed by HTHL, and the settlement agreement will formerly terminate this eventuality. The management agreement will therefore need to be updated to remove reference to HTHL and it is proposed that this work is undertaken under the existing delegation of the Chairman of the Cabinet Sub-Committee in consultation with the lead officer for the Trust and the Trust Lawyer.

9. LEGAL IMPLICATIONS

- 9.1 The Cabinet Sub-Committee has within its terms of reference to act on behalf of the Council as corporate trustee for all assets of the Council that are held on a charitable trust. Also within the committee's terms of reference is to consider all proposals and representations from and on behalf of the Council or any third party, in connection with the use, operation, management and ownership of trust assets.
- 9.2 Within the Cabinet Sub-Committee's terms of reference is a delegation to the Chairman in consultation with the lead officer for the trust concerned and the trust lawyer to authorise the entering into any agreement, contract, lease, consent or deed to surrender or termination for administrative or minor matters (including minor amendments).
- 9.3 The Sub-Committee Members are not themselves charity trustees (the Council remains the trustee). They must, however, act in a responsible way so as to ensure that the local authority acts properly as a charity trustee. If Members fail to do this they may be liable to the Council under local government law for any losses it bears as a charity trustee. Members must, on behalf of the trustee, ensure that the charity does not breach any of the requirements or rules set out in its governing document and that it remains true to the charitable purpose and objects set out there. If trustees act prudently, lawfully and in accordance with the governing document then any liabilities that they incur can normally be met out of the charity's resources. If the trustees act imprudently, or are otherwise in breach of the law or the governing document, the position is different. Here trustees may be responsible for liabilities incurred by the charity or for making good any loss to the charity.
- 9.4 In 2006 Parliament passed legislation for charities which, amongst other provisions, highlighted the requirement for all charities' aims to be, demonstrably, for the public benefit. The Charity Commission is required to publish guidance on public benefit, to which charity trustees must have regard. Every charity, therefore, has to consider the guidance and respond appropriately in its work and its reporting to the public through the Charity Commission.

10. FINANCIAL IMPLICATIONS

- 10.1 Once the premises is fully operational, the net expenditure for the Trust is estimated to be £187,000, this includes income from the Café of £41,000 which will be situated on the Trust site, the gross expenditure will be £228,000. So the site will be subsidised by the Council. There is a risk the net expenditure could fluctuate.

10.2 The purchase of 14-15 Brand Street will result in a further spend of £550,000. A loan was made to Hitchin Town Hall Limited of £14,000 which has not been repaid. On the original proposal Hitchin Town Hall Limited were to contribute £490,000 towards the construction and £60,000 towards the kitchen fit out, this contribution had not been made.

11. RISK IMPLICATIONS

11.1 There are no direct risks implications for the Trust.

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.

12.2 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. Section 8.15 clearly identifies the community benefits to be derived from the opening of the while site as originally envisaged.

13. SOCIAL VALUE IMPLICATIONS

13.1 The Social Value Act and “go local” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The demands of this project have been significant over a long period of time including additional time having to be committed to this project by Chief Officers that has created pressures and delays on other important work programmes elsewhere.

15. APPENDICES

15.1 Appendix A – Part 1 report to Cabinet on 20 November 2018 plus appendices to the report.

16. CONTACT OFFICERS

16.1 Marie Searle, Trust Lawyer
marie.searle@north-herts.gov.uk; ext 4315

16.2 Howard Crompton, Service Director: Customers
Howard.crompton@north-herts.gov.uk; ext 4247

16.3 Senior Policy Officer
Reuben.ayavoo@north-herts.gov.uk; ext 4212

16.4 Kerry Shorrocks, Corporate Human Resources Manager
Kerry.shorrocks@north-herts.gov.uk; ext 4224

17. BACKGROUND PAPERS

17.1 Management Agreement agreed by the Sub-Committee on 27 July 2010