

REPORT DUE TO BE CONSIDERED BY CABINET ON 20 NOVEMBER 2018

**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

- 1.1 At its meeting on 25th September 2018, Cabinet provided a final offer of a settlement agreement to Hitchin Town Hall Ltd (HTHL) and Hitchin Town Hall Finance Ltd (HTHF). On the 30th October 2018, HTHL held an extraordinary general meeting (EGM) and their shareholders accepted the Settlement Agreement. This report seeks the formal approval of Cabinet for the Settlement Agreement and purchase of 14/15 Brand Street. The Cabinet Sub-Committee (Council Charities) will also be asked to provide their comments on the settlement agreement in advance of this meeting.

2. RECOMMENDATIONS

That Cabinet:

- 2.1 approves the purchase of 14/15 Brand Street for £550,000.
- 2.2 confirms that the Council should enter into the Settlement Agreement at Appendix A.
- 2.3 notes the timeline for the full opening of the North Hertfordshire Museum.

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 have been fully investigated. A costed options appraisal considering a number of scenarios for the occupation of the land which the Council currently owns has been undertaken to guide the price offered. The acquisition of 14/15 Brand Street by agreement means that the full facility will be available and it brings an end to the contractual dispute.

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 22 October 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>).
- 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 The resolution of Cabinet on 25th September was:
- 2.2 *That Cabinet agrees to a Settlement Agreement that will be provided as a final offer to HTHL/HTHF. HTHL would be required to fully accept the Settlement Agreement by holding an Extraordinary General Meeting (EGM) by the 31st October 2018. Subject to agreement in principle and HTHL having set a date for their EGM, a date would then be arranged for mid-November for an extraordinary Cabinet meeting and a Cabinet Sub-Committee (Council Charities) meeting to consider the final Settlement Agreement.*

8. RELEVANT CONSIDERATIONS

The Settlement Agreement

- 8.1 On the 1st October 2018, the Council received communication from HTHL that they would be calling an EGM for the 30th October 2018 that would seek approval from their shareholders for the Settlement Agreement offered by Cabinet.

- 8.2 The EGM took place on the 30th October 2018 and the Settlement Agreement was approved subject to one change. This changed the definition of community purpose from “activities which a reasonable person might consider are being carried on directly or indirectly for the benefit of the North Hertfordshire community” to “activities which a reasonable person might consider are being carried on for the benefit of the North Hertfordshire community provided that a reasonable level of commercial use may be carried out in order to provide income to support those activities”. The Council plans to use the facility for a range of purposes that include:
- Lettings to community groups, particularly during the week
 - Private bookings to the North Hertfordshire community, including those with links to the area
 - Events arranged by the Council that will be available to everyone, but it is expected that they will be more likely to be attended by the North Hertfordshire community
 - Some commercial events
- In correspondence from Hitchin Town Hall Limited prior to the EGM it was stated that “indeed in our business model, had HTH run the facility, we too would have had a fair degree of commercial usage”. On the basis of the above it is considered that the Council could agree to the proposed amendment.
- 8.3 The above was communicated to the Council in a letter dated 31st October 2018. An e-mail from Hitchin Town Hall Finance Limited on 5th November 2018 confirmed that “the letter sent on 31st October 2018 by Hitchin Town Hall Ltd has the support of HTH Finance Ltd and on that basis we would sign the proposed Settlement Agreement”.
- 8.4 Following that correspondence, a press release will need to be agreed with the Directors of HTHL and HTHF. At the time of writing this report this was still ongoing. Cabinet are now asked to confirm that they have no objections to the Settlement Agreement at Appendix A. The Executive Member for Community Engagement and Rural Affairs will be consulted on the press release.
- 8.5 Throughout the negotiations on the Settlement Agreement, the Council has been focused on ensuring that it provides suitable resolution of all the issues and that it is appropriately enforceable. Further details on this are provided in the part 2 report.
- 8.6 As well as approval by Cabinet, the proposed Settlement Agreement is also subject to consideration by the Cabinet Sub-Committee (Council Charities). This is because the original Development Agreement was signed by the Council on behalf of the Trust as the development included land owned by Trust. The original Development Agreement would have seen the property at 14/15 Brand Street being gifted to the Trust directly from HTHL. The expenditure that the Council will now incur in acquiring 14/15 Brand Street means that it intends on keeping the property. 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. The Cabinet Sub-Committee are scheduled to meet earlier on the same day as this Cabinet meeting, and will refer any comments that they have on to this meeting.

Process required for acquisition of 14/15 Brand Street

- 8.7 The Settlement Agreement operates as a contract for sale. The usual conveyancing procedure will be followed which will result in exchange of contracts and completion of the legal transfer of the property.

- 8.8 Prior to completion the Council will obtain a formal undertaking from the solicitors acting for Hitchin Town Hall Limited that the debt to Hitchin Town Hall Finance Limited will be repaid from the proceeds of sale, and that the charge over the property will be then be removed.
- 8.9 On the completion date, possession and control of the property will be transferred to the Council. An application will then be made to the Land Registry to register the property to NHDC.

Full opening of the North Hertfordshire District Museum

- 8.10 The gantt chart at Appendix B shows the estimated programme of works that is required to ensure the building is complete and the Council is able to open the district museum in its entirety. Based on this the anticipated opening date for the full facility is early June 2019. This takes into account works not taking place over Christmas and a small amount of contingency time.

History of negotiations

- 8.11 Whilst HTHL and HTHF have asserted in correspondence that they had no objections to negotiations taking place in public, the fiduciary duty placed upon the Council meant that where matters were commercially or legally confidential then they are treated in such a manner. Accordingly the Council has not provided any public comment on these matters. The Council still does not intend to provide a response to the majority of the statements that have been made. However a recent Comet article is relevant to how negotiations have progressed and the decision being made.
- 8.12 An article in the Comet on 3rd October 2018, quoted Stephen Pike (Chairman of HTHL) as saying that the Council had backed down in relation to the five-year rolling hold over the town hall and that the Council “have mostly come round to our way of thinking to protect the use of Hitchin Town Hall”. The concept of a 5-year rolling protected period was agreed in October 2017. Although HTHL/HTHF did not originally appreciate the Council’s commitment in regards to this, this was fully clarified in July 2018 and the wording of this clause has not changed.

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 in 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 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."
- 9.4 Paragraph 14.6.9 (a) (viii) of the Council's Constitution determines that the Service Director: Legal and Community can "authorise the institution, defence, withdrawal or settlement of any legal proceedings, civil or criminal (other than for Health and Safety proceedings, Council tax, non-domestic rates and sundry debts)."

10. FINANCIAL IMPLICATIONS

- 10.1 The Council's total capital expenditure on this project currently stands 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 17th 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, as agreed by Cabinet at its meeting on 18th March 2017. As the purchaser, the Council would also need to pay Stamp Duty Land Tax of £17k, which would also be a capital cost. This was not included within the initial capital budget to avoid confusion over the amount being offered. The additional cost is within the tolerances set out within the financial regulations (sections 5.5 and 5.6).
- 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 The intention of the Settlement Agreement is to eliminate the risk of litigation being 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 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.
- 12.2 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. The purchase of 14/15 Brand Street, will realise the original designs for the museum and town hall. This option will enhance the experience for all visitors, including those with disabilities.

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 that has been placed on the Senior Officers and Project Team Members. This has been mitigated by the reallocation of resources from less time sensitive projects but this could not be sustained indefinitely.
- 14.2 The uncertainty has been of concern particularly with the Museum staff with the ongoing delay in the full opening of the Museum.

15. APPENDICES

- 15.1 Appendix A- Proposed Settlement Agreement.
- 15.2 Appendix B- Gantt chart of activities required for the full opening of Hitchin Town Hall and District Museum.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 As per 7.1.