

## Note to Scrutiny Review Panel

Firstly I wish to state that I concur with the witness statement sent by Stephen Pike, Chairman of Hitchin Town Hall Ltd.

The individuals listed below, all professionals, were involved in this sorry saga and together raised over £1 million to contribute. Because of the stance of NHDC officers and the leader Lynda Needham this did not materialise and a long unnecessary dispute followed.

Matters were so bad that a formal complaint was made against the lead officer Mr Robinson, and a report compiled following an investigation by the LGA. Details of this report have never been made available. It is our firm belief that had Mr Robinson been taken off the case the end result would have been totally different and would have been settled several years ago.

All involved from the Community side should be called to give evidence including:

- Brent Smith – Director, Hitchin Town Hall Ltd
- Stephen Pike – Chairman, Hitchin Town Hall Ltd
- Rosemary Read – former Director Hitchin Town Hall Ltd
- David Leal-Bennett – former Director Hitchin Town Hall Ltd
- David Morgan – Lawyer and senior partner with Foreman Laws

### Critical Path Event

A crucial meeting took place on 28th February 2014 just after the start of the construction of the concrete wall, a material breach of the agreement, and before any notice of breach had been served. The minutes of this meeting were never finalised since officers attempted to sanitise the record, what is available is the officers' version with HTH comments as a correction. Fortunately there is recording of this critical meeting. David Parsley FRIC, led the meeting.

The following, extracted from some of the many lengthy documents, highlight but a few instances where NHDC acted unreasonably and illegally with their "Partner" Hitchin Town Hall Ltd – there are many other examples.

#### 1. Project Completion

- a. It would appear that the Buttress (Overseeing architect) were aware of the problems which caused material contractual breaches:
  - i. On 10th March 2014 the architect stated at a Project Board meeting:
    1. "the inclusion of the requirement for a stud wall by reference to the Design & Access statement appears to be a mistake. Otherwise, the logical conclusion would be that the parties (i.e. Borrás & NHDC) intentionally entered into an agreement which is impossible to perform".
- b. Another key requirement was the roof replacement
  - i. It was one of the "Development Requirements" under Annex 6 of the DA.
    1. All existing pitched roof finishes shall be stripped and replaced. The pitched roofs shall incorporate breathing

sarking felt and insulation to at least current Building Regulation standards. As detailed in the architectural restoration specification page 53 and costs identified in the Cost Report, page 6, which identified pitch roof to town hall will be stripped and replaced.

- c. Under these circumstances HTH find it incredulous that a Certificate of Practical Completion was issued?
- d. The logical conclusion would be that the construction contract with Borrás bore no resemblance to the requirements NHDC were obliged to deliver under the Development Agreement.

Extracts concerning additional Contract Breaches

1. Contract with HTH - The Development Agreement ("DA")

- a. NHDC maintain that the DA is still in existence in spite of HTH serving notice of Material Breach. As such NHDC would be bound by the DA and the clauses therein? This poses the following questions
  - i. Because of the delay, since 9th March 2015 NHDC have been obliged to pay the principal and interest on the SIB loan £12,750 and £6,375 per quarter respectively, Clauses 9 & 10.
    1. This has not been paid? but is an obligation on HTH
  - ii. Freedom of Information requests
    1. Under Clause 15.1a these have to be advised in writing to HTH.
    2. NHDC have posted redacted Project Board minutes on the website, without any communication with HTH?
  - iii. Certificate of Practical Completion
    1. The contract states that HTH have to be invited to inspect the work BEFORE the certificate is issued to discuss outstanding points.
    2. HTH were never advised prior to issuance.
    3. The certificate was issued even though work on the roof (see above) has not been undertaken.

In short NHDC's officers and the CEO did what they wanted when they wanted and expected HTH Ltd to agree. Unfortunately for NHDC the individuals involved from HTH were all professionals with many years experience in the commercial world and as such were not prepared to be treated in this manner, particularly when NHDC had clearly breached the contract.

David Leal-Bennett

Director HTH Finance Ltd

***NB. One sentence has been redacted as it is not pertinent to the scope of the review.***

***NB: As submitted and for completeness the following two pages have been included. However, only the first two pages have been considered by the Panel, as per the requirement stipulated in the 'Call for Written Witness Statements' document.***



**SCHEDULE OF BREACHES OF THE DEVELOPMENT AGREEMENT  
DATED 9 SEPTEMBER 2013 ("DA")**

Defined terms used in this Schedule shall have the meanings applied in the DA unless specified to the contrary.

Breach	Applicable Clause(s)	Evidence
1. Council varied the plans and did not notify HTH Limited of the variations within 10 working days or provide 2 sets of the revised documents at the time of the variation.	Clause 5.1 (e), (f) Schedule 2 Clause 1.3	Plans not forwarded to HTH Limited until 1 Nov 2013. Design & Access Statement ("DAS") dated 12 June 2014, written after the work had been carried out. Drawing 7198(06)002 not provided to HTH Limited until inclusion in Listed Building Application. Harris Electrical and Ambivent Mechanical drawings all dated Feb 2014 not issued to HTH Limited until inclusion as above.
2. Failure to apply for the Requisite Consents before work carried out as required for a Listed Building.	Clause 5.1 Schedule 2 Clauses 2.1. 2.2 and 5.2(d)	Listed Building Application 14/01633/1LB submitted June 2014.
3. Failure to consult HTH Limited about alterations to the Approved Documents and to ensure that variations are in accordance with the Requisite Consents.	Clause 5.1 (f)  Schedule 2 clause 1.1	Email from Brent Smith of HTH Limited to John Robinson of the Council dated 29-Apr-14.  DAS and retrospective application for Listed Building Consent.
4. Failure to carry out the refurbishment of the Hitchin Town Hall Gymnasium (the "Hall") in accordance with the DA.	Clause 5.1 (g) Schedule 2 clauses 2.2, 5.2(c), 5.2(h) Schedule 6 HTH Limited requirements  Schedule 2 cl 1.4	a) <i>Stage</i> : letter of 25 February 2014 from HTH Limited to NHDC. b) <i>Foyer</i> : email from Helen Bylett to HHS 6 June 2014; from David Leal-Bennett of HTH Limited to David Scholes of the Council, 28 April 2014 Reference to Sound Attenuation section of the HTH Limited requirements and its link to the DAS confirming the stage should be reversible.
5. Inspection: HTH Limited were frequently prohibited from visiting the site – often when instances in this Schedule were taking place.	Schedule 2 Clause 8	Emails: David Leal-Bennett to Keith Gaynor/Steve Crowley, 17 April 2014, and Keith Gaynor reply.  Email from Brent Smith to John Robinson 29Apr14: see 3 above.
6. Freedom of Information request not	Clause 15.1 (a)	Emails: David Leal-Bennett to Sharon Nahal on 8 April 2014 reply from John

passed to HTH Limited within the specified time.		Robinson 09 April.
Breach	Applicable Clause(s)	Evidence
7. Failure of Project Management by not holding regular meetings, giving insufficient notice of meetings to HTH Limited ignoring HTH Limited requests for inclusion of significant points raised by them in minutes of meetings.	Clause 16.1 Annex 5	Emails: David Leal-Bennett to John Robinson on 24 March 2014, and 11 April; replies from John Robinson 9 April and 23 April. "Draft" minutes of Design & Construction team meeting 28 02 2014 attached to email from John Robinson on 18 March 2014. Amended draft minutes of meeting following default notification from HTH Limited.
8. Failure to use the Liaison Process to review the plans and to enable HTH to obtain the consent of ACF on any proposed amendments.	Clause 4.3(c)	See 7 above.