

**ADDENDUM REPORT: NORTH HERTFORDSHIRE MUSEUM & COMMUNITY FACILITY AT HITCHIN TOWN HALL**

REPORT OF THE STRATEGIC DIRECTOR OF CUSTOMER SERVICES & PROJECT EXECUTIVE

PORTFOLIO HOLDER: COUNCILLOR TONY HUNTER

**1. SUMMARY**

- 1.1 This supplementary report provides further information not available when the agenda for this meeting was published.
- 1.2 The report provides a further update on the current financial status of the project, the Options available based on this and the proposal received from Hitchin Town Hall Ltd (HTH Ltd)
- 1.3 Finally, the report provides an analysis of the overall circumstances and a revised recommendation based on this not to agree to the Hitchin Town Hall Ltd proposal and instead for the Council to operate the Town Hall pending a further review of the Options going forward.

**2. RECOMMENDATIONS**

Council is recommended to:

- 2.1 Not agree to the proposals to vary or replace the Development Agreement submitted by Hitchin Town Hall Ltd.
- 2.2 Instruct officers to serve notice on Hitchin Town Hall Ltd terminating the Development Agreement in the event of non payment of their capital contribution and, subject to this;
- 2.3 Agree that NHDC will operate the Town Hall directly in accordance with the general provisions of the Development Agreement, request Cabinet approves the necessary revenue budget and reviews this operating model within three years of opening and, subject to this:
- 2.4 Agree capital expenditure to a maximum of £138,000 for the fit out of the Town Hall.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To enable the Council to complete the development of the North Hertfordshire Museum/Hitchin Town Hall project.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 An option to recommend to agree to the proposals put forward by Hitchin Town Hall Ltd was considered. In view of the fact the proposal seeks to change substantial elements of the Development Agreement and would involve significant additional expenditure, additional risk by providing guarantees for loans and changes in the governance and operational arrangements which would mean less income opportunities for the Council, this option was not viewed as acceptable.
- 4.2 Consideration was also given to recommending entering negotiations with Hitchin Town Hall Ltd to seek to amend the proposals but, for the reasons given in 4.1 above, and because of the significant delay that would be entailed, and the resultant loss of service and income this option has not yet been pursued.
- 4.3 A number of Options to determine an alternative management arrangement are considered in further detail in paragraph 8.6 – 8.9 including the recommended Option that the Town Hall is directly managed by NHDC pending consideration of longer term arrangements.

#### **5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 5.1 Consultation has been carried out with the Leader and the Portfolio Holder for Community Engagement & Rural Affairs and the Project Board.

#### **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 This is described in paragraph 7 of the report previously circulated.

#### **8. NORTH HERTFORDSHIRE MUSEUM & COMMUNITY FACILITY**

##### **Financial Status**

- 8.1 Under the terms of the Development Agreement, Hitchin Town Hall Ltd are now obliged to pay the sum of £490,000 to the Council's construction contractor following the issue of the Certificate of Practical Completion. Notice of this has been served to Hitchin Town Hall Ltd and an update on the status of the payment will be provided at Council. If payment has not been made by the due date Council, at its meeting 10 March 2015 resolved that this payment would need to be paid from Council resources in order to meet its contractual commitment to the construction contractor.
- 8.2 The deadline for payment of this sum is 13 July 2015 and a verbal update on the status of this payment will be provided. Failure to pay this sum would constitute a clear breach of the Development Agreement and provide a potential ground for the Council to terminate the Agreement.
- 8.3 Hitchin Town Hall Ltd have confirmed that it does not currently have the ability to pay this sum or the loan of c.£17,000 plus £1,300 interest provided by NHDC unless the SIB (Social Investment Business) agrees to its proposals.

- 8.4 Paragraph 7.6 of the report already circulated outlines dialogue with Hitchin Town Hall Ltd's funder, the SIB whose approval would be required for Hitchin Town Hall Ltd to meet its existing or proposed financial obligations. The SIB have confirmed:

*'In September 2012 the Communitybuilders Fund (the Fund) which is managed by the Social Investment Business made an investment offer to Hitchin Town Hall Limited (HTHL), secured by a legal charge over 14/15 Brand Street.*

*In December 2014 HTHL was formally notified that it was in default of the Investment Agreement as a consequence of several Events of Default under that agreement, which were not capable of remedy. The investment offer was therefore withdrawn and Formal Demand for repayment of the funds previously drawn issued.*

*Subsequently the directors of HTHL requested that recovery action be deferred to enable them to formulate a proposal for consideration by North Hertfordshire District Council. The Fund agreed on the understanding that the proposal would be supported by a comprehensive business plan, for consideration initially by NHDC and subsequently by the Fund if NHDC decided it was willing to support the proposal.*

*Whilst HTHL has provided the Fund with a copy of the proposal presented at the mediated meeting, this was not accompanied by a business plan or indeed any other information. Furthermore no element of supporting information has been forthcoming following requests prior to and subsequent to the mediated meeting.*

*Therefore having granted significant time in good faith for HTHL to formulate a robust and viable proposal, the Fund has not been presented with anything, substantive or otherwise, to consider.'*

### **Town Hall Operating Options**

- 8.5 The financial position outlined above makes it extremely unlikely that Hitchin Town Hall Ltd will be in a position to open the Town Hall as planned in October 2015.
- 8.6 As a result a number of Options to open and manage the Town Hall without the involvement of Hitchin Town Hall Ltd have been considered and these are outlined in Table 1 below:

<b>Option</b>	<b>Pros</b>	<b>Cons</b>
<b>Option 1</b>  Encourage the creation of new Charity/Limited Company	<ul style="list-style-type: none"> <li>• 'Like for like' replacement operator</li> <li>• May have lower operating costs</li> <li>• Operator assumes some risk</li> </ul>	<ul style="list-style-type: none"> <li>• Time delay</li> <li>• Capital investment required</li> <li>• Unknown revenue costs</li> <li>• New start-up, no track record</li> </ul>

<p><b>Option 2</b></p> <p>Contract with existing Charity/Limited Company or commercial operator</p>	<ul style="list-style-type: none"> <li>• 'Like for like' replacement operator</li> <li>• May have experience</li> <li>• Operator assumes some risk</li> </ul>	<ul style="list-style-type: none"> <li>• May not involve community organisation</li> <li>• Time delay for procurement</li> <li>• Capital investment required</li> <li>• Unknown revenue costs</li> </ul>
<p><b>Option 3</b></p> <p>NHDC to directly manage the Town Hall</p>	<ul style="list-style-type: none"> <li>• No significant extended lead in time</li> <li>• Experienced management</li> <li>• Possible economies for integrating with Museum</li> <li>• Broadly cost neutral in revenue at start up and generates surplus thereafter.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not involve community organisation</li> <li>• Council revenue and capital required</li> <li>• Diversion of resources from other projects</li> <li>• Council assumes risk of making facility successful</li> </ul>

Table 1: Town Hall Management Options

8.7 Table 1 provides a high level summary of the benefits and disadvantages of each of the identified operating models. Under Option 1 it is envisaged that a new charity/limited company could be created but that equally in Option 2 that a contract could be entered in to with an existing charity/limited company of that sort. Option 2 however also allows for the outsourcing of the management of the Town Hall to a wholly commercial operator but in any event both Option 1 and 2 provide broadly the same benefits and dis-benefits. The Option for NHDC to directly manage the Town Hall would be achievable within the existing timescales of the project reducing the risk of the Town Hall standing unused. However, this Option would require the Council to commit additional capital to the scheme although it is arguable that the capital investment required of external management operators would be discounted from any income receivable as such organisations would seek to recover 'start up' costs.

8.8 In considering a preferred Option it is noted that:

- Option 1 and potentially Option 2 could provide a 'like for like' solution involving a locally accountable charity or similar body.
- Option 3 would allow Council to consider the medium to long term Options for managing the Town Hall which may involve another locally accountable body. Alternatively it could consider greater integration with the operation of the North Hertfordshire Museum – a development of the option which is likely to produce greater efficiencies.

- In Options 1 and 2 there is no immediate cost certainty as both Options would be reliant on a procurement exercise or process of negotiation but Option 3 has the benefit of offering such certainty from the outset.
- Options 1 and 2 are likely to result in significant delay in opening the Town Hall. This would entail additional revenue costs and loss of income for NHDC and could also impinge on Museum operations. Option 3 would however, require the Council to make additional capital contributions although third party operators are likely to seek to recover similar contributions required under Options 1 and 2 over the lifespan of any contract.
- Option 1 may entail a significant time delay and indeed may not be achievable if individuals or organisations were not willing to form a new charity/limited company. Option 2 would similarly entail a delay for procurement and although it is thought there is a potential market place of suitable contractors, in relative terms the contract would be small and potentially unattractive to many.
- Option 1 and, to a lesser extent Option 2, would present risks in respect of operational costs and potential delays in opening. Option 3 is likely to minimise risk of delay as no external party would be directly involved, it should also generate surplus revenue.

8.9 Following consideration of these issues it is concluded that Option 3 is the most appropriate and the indicative costs associated with it are summarised in Table 2 below. These assume operating the Town Hall in accordance with the general provisions set out in the Development Agreement in which commercial activity subsidises community use.

<b>Town Hall Income</b>		
Events	£	45,000.00
Hires	£	151,855.00
Office Rental	£	5,000.00
<b>Kitchen/Café Income</b>		
Kitchen/Café	£	90,000.00
Vending	£	46,800.00
<b>Total Income</b>	£	<b>338,655.00</b>
<b>Town Hall Expenditure</b>		
Staffing	£	50,862.00
Maintenance & Energy	£	26,088.00
Marketing & Events	£	35,000.00
Other	£	5,050.00

<b>Kitchen/Café Expenditure</b>		
Staffing	£	44,324.00
Maintenance & Energy	£	22,965.00
Kitchen/Café Stock	£	40,500.00
Vending Stock	£	21,060.00
Marketing	£	1,500.00
Other	£	4,012.00
<b>Total Expenditure</b>	£	<b>251,361.00</b>
<b>Net Profit/Loss</b>	£	<b>+ 87,294.00</b>

Table 2 –Hitchin Town Hall estimated Income and Expenditure Projections – NHDC managed Option

<b>Area</b>	<b>Capital Budget</b>	
Café and Kitchen	£	64,563.27
Admin Office	£	1,540.00
Lucas Room	£	13,200.00
Mountford Hall	£	38,435.00
General	£	20,246.75
<b>Total</b>	£	<b>137,985.02</b>

Table 3: Hitchin Town Hall estimate Capital expenditure – NHDC managed Option

8.10 Table 2 provides a summary of estimated Revenue Expenditure and Income for a full year of operation at the Town Hall, and Table 3 illustrates the maximum capital expenditure required. These costs are based on market research and assumptions made on the projected utilisation of the Town Hall operated using the model outlined in the Development Agreement and the assumed charging regime arising from this.

The figures in Table 2 do not include income generated by franchising or licencing the provision of a bar, nor do they account for Business Rates and internal recharges. Figures for capital expenditure are based on estimates and quotations obtained for the purpose of this report.

8.11 At this stage no allowance has been made to reflect the fact that bookings, events etc have yet to be marketed and an element of risk arises from this. It is likely that it would take some time to generate such business and this was an assumption made in Hitchin Town Hall Ltd's financial model. For comparative purposes the overall operating surplus projected by Hitchin Town Hall Ltd from first full year of operation to the third full year rose from £88k to £177k excluding loan etc repayments.

8.13 The projected capital requirement is the maximum envisaged and may be reduced following Cabinet's consideration of the proposed operational model. Revenue projections are based on a full year and would need to be adjusted to reflect the anticipated opening in late autumn and other issues detailed in para 8.10- 8.11.

8.14 A detailed mobilisation plan for this Option has been developed and confirms that NHDC should be in a position to open the Town Hall as originally planned in October.

However, the plan does not include any contingency for unexpected delays and has been developed over a very short timescale. For this reason, it is suggested that if this option is pursued an additional 6 -8 weeks would be required to provide such contingency.

### **General**

- 8.15 Hitchin Town Hall Ltd's funding has been withdrawn by the Community Builders Fund (SIB) and dialogue between it and the Council will need to take place regarding access to and ownership of 14 and 15 Brand Street on which part of the Museum is now built. Council is asked to note that, subject to resolving to terminate the Development Agreement, a report detailing the outcome of these negotiations and any potential additional capital costs will be presented to Cabinet in due course.
- 8.16 In this report an assumption has been made that Council would wish to see the Town Hall operating as originally envisaged in the Development Agreement with Hitchin Town Hall Ltd. In brief, this broadly provided for the Town Hall to operate on a quasi commercial basis using profit to repay debt and subsidise 'community' use. Unless advised to the contrary officers will continue to use this as a working assumption when devising an activity programme, hiring policies etc with any variations to this approach being subject to approval by Cabinet and (if necessary) the Cabinet Sub-Committee (Council Charities).

### **Conclusion**

- 8.17 The proposal submitted by Hitchin Town Hall Ltd, outlined on pages 195 – 200 of the corresponding Part 2 report, seeks to significantly alter the Development Agreement in its favour. Hitchin Town Hall Ltd does not have the means to meet its current obligations or approved finance to meet the obligations envisaged in its proposal. There seems to be no reason why the Council should choose to commit additional expenditure to the project as would be required and accept further financial and operational risk when any of the alternative Options would largely avoid this. As a result it is recommended in para 2.1 that Council does not agree to the proposal from Hitchin Town Hall Ltd to vary or replace the Development Agreement. It is further recommended at para 2.2 that the Development Agreement is terminated in the event Hitchin Town Hall fail to pay the capital contribution.
- 8.18 The preferred Option for NHDC to manage the Town Hall pending a review of longer term Options allows the hall to open broadly on time and offers the opportunity to generate a revenue surplus over time. There remains an element of risk associated with the acquisition of 14/15 Brand Street and with developing a programme of activities in a short timescale but, on balance, it is felt such risk would be manageable and proportionate. Consequently at para 2.3 Council is recommended to agree that the Town Hall be operated by NHDC subject to a review of management options within three years of opening and, at para 2.4 Council is recommended to approve additional capital expenditure up to £138,000 should this approach be approved.

## **9. LEGAL IMPLICATIONS**

- 9.1 The main legal implications are set out within the original reports.
- 9.2 If Full Council decide not to proceed with the Hitchin Town Hall Ltd offer, consideration will need to be given to whether to pursue the company for breach of the Development

Agreement and/or non-payment of the loan made by the Council. Paragraph 14.6.9(f) delegates to the Corporate Legal Manager the power “to authorise the institution, defence, withdrawal or settlement of any legal proceedings, civil or criminal (other than for ...sundry debts)”. Paragraph 14.6.7(b)(i)(G)1 delegates to the Strategic Director for Finance, Policy and Governance the same powers in respect of sundry debts. There would need to be an assessment as to whether the sums owed are likely to be recovered given Hitchin Town Hall Limited’s stated lack of assets.

- 9.3 If Hitchin Town Hall Limited fail to make the capital contribution required under the Development Agreement this would potentially constitute a significant breach of the Agreement and the Council could seek to terminate that Agreement.
- 9.4 If the Council were to consider Options 1 or 2, either at this point or in the future, the development of those proposals would need to take account of the Council’s Contract and Procurement Rules.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The financial implications and other unquantified costs of Hitchin Town Hall Ltd’s proposal are detailed in the corresponding Part 2 report.
- 10.2 The financial implications in the event that the £490k capital contribution is not received from Hitchin Town Hall Ltd are set out in the original reports.
- 10.3 In accordance with NHDC Financial Regulations, authority from Council is required for expenditure to be incurred on any items not included in the approved capital programme. The recommended Option that NHDC manage the Town Hall directly, pending a review of longer term options, is estimated at this stage to require a capital expenditure outlay by NHDC of up to a maximum of £138k.
- 10.4 Subject to Council approval of recommendation 2.4, any further revisions required to the capital budget as costs are finalised will be highlighted to Cabinet within the quarterly capital monitoring reporting.
- 10.5 The estimated revenue direct costs and income generated from NHDC managing the Town Hall included in the body of this report are based on a twelve month activity period. The impact on the General Fund in financial year 2015/16 will be dependent on the date from which the Hitchin Town Hall is operational. The current expectation is an opening date in late Autumn 2015 with a full quarter of activity occurring in financial year 2015/16.
- 10.6 If Council agree to proceed on the basis of Option 3 and the NHDC business model for Hitchin Town Hall is fully developed, any additional revenue budget required in 2015/16 will be requested as part of a subsequent report provided to Cabinet, which will contain a detailed breakdown of the impact on the General Fund both in current and future financial years. The estimates for financial year 2016/17 and beyond will then be subject to further review and update as part of the Corporate Business Planning process.

## **11. RISK IMPLICATIONS**

- 11.1 The risks and opportunities arising from the various Options have been considered throughout this report.

- 11.2 Clearly there is a revenue generating opportunity from the Council directly managing the Town Hall but there is a risk of failing to obtain the projected revenue through lack of hires and/or unknown costs. This could result in the Council having to subsidise the operation of the hall.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 The Equality Act 2010 came into force on the 1 October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5 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 For any individual new revenue investment proposal of £50k or more, or affecting more than two wards, a brief equality analysis is required to be carried out to demonstrate that the authority has taken full account of any negative, or positive, equalities implications; this will take place following Council's agreement of any additional investment by NHDC.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 As the recommendations made in this report do not 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 will be evaluated in terms of its social value through the Council's procurement processes.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 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.
- 14.2 There is concern that Officers involved have added work pressures because of the time that has had to be put into this project. In addition they have been exposed over the long term to an difficult and sometimes hostile working environment with Hitchin Town Hall Ltd and this is not a sustainable long term approach for the wellbeing of those individuals.
- 14.3 The preferred option will require additional management resources as highlighted in the costings for Option 3. These resources if approved would help manage the additional workload described above.

14.4 The Museum staff have already been through a restructure and formal consultation process that included the possibility of the staff working on the Town Hall as well as the Museum. Communications with staff to update them on the latest position will follow.

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## **16. BACKGROUND PAPERS**

- 16.1 Report to Cabinet 23<sup>rd</sup> August 2005 on the Findings of the Review of the North Herts Museums Services.
- 16.2 Report to Cabinet 27<sup>th</sup> January 2009 on the Future of Museums Services.
- 16.3 Cragg Management Services report on the possible relocation of North Hertfordshire Museums to Hitchin Town Hall- Annex 2, Cabinet 19<sup>th</sup> May 2009.
- 16.4 Report to Council on 3<sup>rd</sup> December 2009: Hitchin Town Hall/Museum Feasibility Study Outcomes and Actions Arising.
- 16.5 Report to Council on 11<sup>th</sup> February 2010: Hitchin Town Hall/Museum Community Group Proposal.
- 16.6 Report to Cabinet on 28<sup>th</sup> September 2010: Hitchin Town Hall/ Museum Proposals.
- 16.7 Report to Council on 10<sup>th</sup> November 2010: Hitchin Town Hall/ Museum Proposals.
- 16.8 Verbal update to Council on 7<sup>th</sup> April 2011: North Hertfordshire Museum & Community Facility at Hitchin Town Hall.
- 16.9 Report to Cabinet on 26<sup>th</sup> July 2011: North Hertfordshire Museum & Community Facility: Project Update.
- 16.10 Report to Council on 10<sup>th</sup> May 2012: North Hertfordshire Museum & Community Facility.
- 16.11 Report to Council: 15<sup>th</sup> October 2012 North Hertfordshire Museum & Community Facility.
- 16.12 Report to Council 23<sup>rd</sup> April 2013 North Hertfordshire Museum & Community Facility: Proposal for the Inclusion of 15 Brand Street.
- 16.13 Report to Council 8<sup>th</sup> August 21013 North Hertfordshire Museum & Community Facility: Proposal for the Inclusion of 15 Brand Street.
- 16.14 Report to Overview & Scrutiny Committee 18<sup>th</sup> December 2014 Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Ltd.
- 16.15 Report to Cabinet 27<sup>th</sup> January 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update.
- 16.16 Report to Council 12<sup>th</sup> February 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update.
- 16.17 Report to Council 10<sup>th</sup> March 2015: North Hertfordshire District Council & Hitchin Town Hall Ltd: Project Update.