

CABINET 23 JANUARY 2018

*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No. 13
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**TITLE OF REPORT: NORTH HERTFORDSHIRE MUSEUM & HITCHIN TOWN HALL:
ACQUISITION OF 14/15 BRAND STREET**

REPORT OF THE CHIEF EXECUTIVE
EXECUTIVE MEMBER FOR 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).

2. RECOMMENDATIONS

- 2.1 That Cabinet notes the current position in relation to the negotiations.
- 2.2 That Cabinet requires officers to progress the alternative options as detailed in this report to enable the museum to open fully (whilst keeping open the possibility of a negotiated settlement).
- 2.3 That Cabinet note that approval of some elements of any settlement agreement may be required 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. Whilst the preferred option is through the agreed acquisition of land formerly known as 14/15 Brand Street

this has not proved possible on terms agreeable to the Council despite over 15 months 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 that has been investigated, and is being further explored via further specialist advice to enable the facility to operate as envisaged by the scheme which has the benefit of planning permission.

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 HTH Finance Ltd.

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 December 2017.

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. As Cabinet will be aware, under the terms of the Development Agreement HTHL were to provide finance to the project in the sum of £550k (£490k for Hall and £60k for kitchen fit-out) and transfer the former 14/15 Brand Street to the Council Charity, in return for a lease over the main Mountford Hall. With the breakdown in the relationship between the parties, the Council has had to make additional funding available to replace the contribution of £550k which was not forthcoming, but the ownership of the former 14/15 Brand Street remains with HTHL.
- 7.3. 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.
- 7.4. Discussions have taken place in the latter part of 2016 and throughout 2017 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 that any conditions attached to the purchase could not be too onerous. This approach has also been confirmed with the Council's External Auditor. It was agreed at the start of the negotiation process that to set aside previous disagreements the meetings would be conducted between Stephen Pike Chairman of HTHL, John Ray Director of HTH Finance, NHDC Chief Executive and NHDC Chief Finance Officer.

8. RELEVANT CONSIDERATIONS

- 8.1 Since the December meeting of Cabinet there has been some exchange of correspondence between NHDC and HTHL/HTHF. 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. The Part 2 report details the fundamental concerns that exist in relation to the HTHL version of the draft agreement.

- 8.2 NHDC has reviewed again the version of the draft agreement and has considered this in relation to the acceptability for a charitable organisation such as HTHL. There is no apparent legal reason that would prevent HTHL agreeing to the provisions within the NHDC proposed Settlement Agreement in Part 2 by virtue of being a charitable organisation
- 8.3 A further update will be provided at the Cabinet meeting.

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 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 a number of 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, it is almost inevitable that these sums will have 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 various powers under the Local Government Act 1972 and the Planning Act to compulsorily acquire land or buildings under Compulsory Purchase Powers. 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.
- 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 seemed 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 Council tax-payers. Given the difficult progression of negotiations and in the event that acquisition by private treaty does not prove possible then the Council could consider exercising its compulsory purchase powers to acquire the property. In either of these circumstances the Council would also have a property with an enhanced asset value.
- 10.3 The potential costs of compulsory purchase need to be investigated further as they will include the final acquisition cost and potentially significant legal costs. The legal costs would need to be funded from revenue rather than capital budgets.
- 10.4 The alternative approach of modifying the building to allow access would be achievable as an alternative and it is now proposed to prepare and submit the necessary applications for Listed Building Consent. Such applications would need to be considered by the Council's Planning Control Committee and then submitted to the Secretary of State for determination.
- 10.5 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 opening preventing marketing and booking of visiting exhibitions.
- 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 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th 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. Any individual award of a public service contract which may arise following subsequent review of the Council's operation of the hall over the next two/three years will be evaluated in terms of its social value through the Council's agreed procurement processes.

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 and the need to recruit, train and manage a staff team to operate the Museum and Town Hall facilities. 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 Museum staff have been through a formal consultation process on a proposed restructure. 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>