

CABINET 28 MARCH 2017

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

REPORT OF THE CHIEF EXECUTIVE AND STRATEGIC DIRECTOR OF FINANCE, POLICY
& GOVERNANCE

PORTFOLIO HOLDER: COUNCILLOR TONY HUNTER

1. SUMMARY

- 1.1 The purpose of this report is to advise Cabinet of the progress of discussions for the acquisition of 14 and 15 Brand Street from Hitchin Town Hall Ltd, commercially confidential details of which are contained in the part 2 report. Such an acquisition would allow the building to operate as intended by Council in an integrated way for the local community following the withdrawal of funding to HTH Ltd from the Social Investment Business (SIB). The Proper Officer is satisfied that, in accordance with section 15 (paragraph 15.5.1 and 15.5.2 of the Council's Constitution) the report is genuinely urgent and cannot be delayed until a later meeting because of the need to secure ownership of the properties and safeguard the Council's substantial interest.

2. RECOMMENDATIONS

- 2.1 That Cabinet endorses the sum offered for the acquisition of 14/15 Brand St as set out in section 8 of the Part 2 report.
- 2.2 That Cabinet delegates approval of the agreements required to formalise the arrangement with Hitchin Town Hall Limited and HTH Finance Ltd to the Chief Executive in consultation with the Leader of the Council, Executive Member for Finance and IT and the Executive Member for Community Engagement and Rural Affairs.
- 2.3 That Cabinet note that approval of some elements of the 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 operational and fixed costs.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The option to open the facility without occupancy of 14/15 Brand Street has been fully investigated but is not recommended. 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 and, whilst these do provide viable options, the preferred option for the reasons set out in the Part 2 report would be to secure the ownership of 14/15 Brand Street and operate the premises as a single entity.

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 carried out with all Executive Members prior to engaging in discussions with HTH Ltd and HTH Finance Ltd.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision but has not been referred to in the Forward Plan due to reasons of special urgency which prevented inclusion. In accordance with section 15.17 of the Council's Constitution the Chairman of Overview and Scrutiny Committee has agreed that this decision cannot be reasonably deferred and a notice setting out the reasons that the decision is urgent was published on the Council's website today and has been circulated to Members by e mail.

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>).
- 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 with the Council, 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. Appendix 1 provides details of the project expenditure and funding.
- 7.2 Information on the situation regarding ownership of 14/15 Brand Street was most recently provided in reports to Council on 21st January 2016. The resolutions of Council to the part 1 report were to note its contents and the part 2 report resolutions are set out below.

Part 2 RESOLVED:

- (1) That authority be delegated to the Strategic Director Customer Services to submit an offer for the acquisition of 14 and 15 Brand Street and associated costs, in accordance with Paragraph 5 of the report;
- (2) That the existing delegations in the Constitution which authorise officers to take any other action necessary to protect the Council's position be noted; and
- (3) That the Strategic Director of Finance, Policy and Governance be authorised to make the necessary adjustment to the Capital Programme, subject to receipt of a satisfactory formal valuation and confirmation that the acquisition provides best consideration to the Council.

7.3 It should be noted that Council has approved in principle the acquisition of 14 and 15 Brand Street to allow the project to be completed in line with the original plans subject to the various financial limits as set out in the Council's Constitution.

7.4 At the time that Council considered the report in January 2016, it was anticipated that a Land and Property Act receiver would be called in to deal with the sale of 14 and 15 Brand Street to seek to recover the outstanding debts to SIB. As Members will be aware the property was indeed marketed by the receiver and the Council put in a bid. The receiver's action did not reach a conclusion, however, and separately, HTH Finance Ltd (a newly formed company) negotiated with SIB and purchased the debt and charge on the property that SIB had secured. In that circumstance the receiver was dismissed and the property remains in the ownership of HTHL with the mortgage beneficiaries now being HTH Finance Ltd.

7.5 Following the acquisition of the debt by HTH Finance Ltd the Council were approached by HTHL and HTH Finance Ltd with a view to resolving the ownership issue relating to 14/15 Brand Street.

7.6 Discussions have taken place in the latter part of 2016 and first quarter of 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 S151 Officer would need to ensure that it was offering value for money to the Council Tax payer. This approach has also been discussed and agreed with the District Auditor.

8. ISSUES

8.1 The Council has invested a large sum of money in the construction of a new museum and refurbishment of Hitchin Town Hall. To help inform the negotiations and subsequent decision-making process regarding the value for money to the Council tax payer from any acquisition of 14/15 Brand street, feasibility work has been undertaken by Buttress Architects which has identified a number of options which would allow the museum and town hall to operate without 14/15 Brand Street, albeit there are compromises that would need to be made if the two landownerships were to be separated. Those options have been costed and evaluated as detailed in the Part 2 report.

8.2 The Council has also considered the business case for additional income generation potential should it be able to acquire 14/15 Brand Street and this would indicate that additional lettings and sale income could be achieved and provide an acceptable return on the investment.

- 8.3 From the negotiations with HTHL and HTH Finance Ltd it would appear that the Council could acquire the site and buildings for a sum that would represent best value and that in the event that the Council were able to come to such an agreement it would be on the basis that there be no further actions or claims by either HTHL, HTH Finance Ltd or the Council against each other. Depending on the detail of the arrangement with HTHL and HTH Finance Ltd it may be necessary to seek approval of some elements of the agreement from the Cabinet Sub-Committee (Council Charities).
- 8.4 Given the choice between spending funds from capital reserves to physically separate the building and have no additional asset value or revenue income stream to show for that expenditure or spending a similar amount to acquire 14/15 Brand Street, have an increased asset value on the books and generate additional revenue income per annum from the additional space, it would represent better value for council taxpayer's money to pursue acquisition.

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 1.4.4 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 1.9 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 Hitchin Town Hall Ltd in respect of the project and a number of statutory demands have been lodged with Hitchin Town Hall Ltd 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.
- 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."

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. A chronology of the reported movement in the project expenditure and funding is attached as Appendix A.

- 10.2 Provision was made within the identified financial risks for the financial year 2016/17 for the potential necessity to write off the loan made to HTH Ltd for legal fees.
- 10.3 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 Council tax-payers. The Council would also have a property with an enhanced asset value.
- 10.4 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 Town Hall. This is currently mitigated by the reallocation of resources from less time sensitive projects but this situation cannot be sustained over a long period.
- 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 approach agreed by Council in July 2015 provided additional management resources. These resources once fully in place will help manage the additional workload described above.
- 14.4 The Museum staff have been through a restructure and formal consultation process that included staff working at the Town Hall as well as the Museum. The current uncertainty will be of concern and communications with staff to update them on the latest position will follow.

15. APPENDICES

Appendix A – Reported Project Expenditure and funding

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>

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