

Extract from Minutes of OVERVIEW AND SCRUTINY COMMITTEE

Held on Thursday, 18 December 2014 at 7.30p.m.

68. DEVELOPMENT AGREEMENT: NORTH HERTFORDSHIRE DISTRICT COUNCIL & HITCHIN TOWN HALL LTD

Councillor Tricia Cowley, Portfolio Holder for Community Engagement and Rural Affairs for much of the period during which this project was discussed and developed, informed Members that she first wished to address a number of points made by the public speaker Rosemary Read of Hitchin Town Hall Limited and by Councillor Leal-Bennett.

Members will have noticed the frequent reference to Officers and the derogatory tone in which they were viewed by Hitchin Town Hall Directors. The insinuation was that Officers had somehow been responsible for impeding the proper implementation of the legally binding agreement between Hitchin Town Hall Limited and North Hertfordshire District Council and had somehow operated in a way that was contrary to the will of Council.

She stated that nothing could have been further from the truth, from her own dealings with the Directors of Hitchin Town Hall Limited, she knew that Officers had attempted to act in a reasonable manner in order to deliver a complex project in an environment where Hitchin Town Hall Limited had chosen to brief the local media and others in a way that was clearly intended to force changes on the agreed scheme and, in particular, to affect fundamental changes to the layout of the stage and museum storage arrangement behind it.

Councillor Cowley reminded Members that the clear intention of the Council was only to agree to such changes if they were delivered without additional cost, delays in the project and if practical arrangements could be found to deal with museum storage elsewhere.

Despite receiving an ill-considered proposal from Hitchin Town Hall Limited to do this, it had been perfectly clear that no changes of the sort being promoted were capable of meeting these conditions and, in the circumstances, Officers, in close consultation with the Political Leadership of the Council, had attempted to protect the Council's interests, although this had not prevented Hitchin Town Hall Limited abandoning its responsibilities as our development partner and leaving Council Tax payers to face an additional cost.

She informed Members that the approach adopted by Hitchin Town Hall Limited had been a feature of the project from its inception. The risks identified in the reports being considered this evening clearly highlight the possibility that Hitchin Town Hall Limited could undermine delivery of the project. It now seemed likely that their actions had fundamentally breached/undermined the trust that Councillors placed in them to deliver their side of the bargain. It was even more galling that the approach taken by Hitchin Town Hall Limited came at a time when this innovative project was nearing completion broadly on time and in budget, despite the obstacles placed in the Council's way.

Councillor Cowley concluded by stating that whilst a one-sided and gloomy view of the management of this project had been presented in public, it was, in her personal experience, that Hitchin Town Hall Limited's motives and collective corporate behaviour had been appalling and contrary to the spirit of the partnership.

The Strategic Director of Customer Services gave a PowerPoint presentation regarding the report entitled Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Limited as follows:

Decision Making Background

- The decision making process and evolution of the project had been long and complex;
- The original scheme proposed a mezzanine floor in the Mountford Hall, providing community space in the Gymnasium and Workmans Hall.
- The second scheme reversed the proposed layout, retaining the Mountford Hall for community use, but still retained museum storage using approximately half of the stage. At this point the first Development Agreement was signed;
- The inclusion of 15 Brand Street allowed expansion of the scheme, the museum storage on the stage was still included. It was at this point that the second Development Agreement was signed.

Development Agreement

- The progress against the Development Agreement had been broadly on time;
- Unusually, the Planning Control Committee asked for conditions regarding Listed Building Consent to be referred back to them, causing an approximate 6 week delay;
- The Development Agreement had, by agreement, been signed prior to detailed designs being completed.

Timeline

- The timeline had been largely driven by the Community Funders;
- The first Development Agreement, including 14 Brand Street in the project, was signed in October 2012. This was due to end in March 2014;
- Drawings were completed to RIBA Stage F in November 2012;
- The Tender was undertaken in October 2012;
- Hitchin Town Hall Planning Application was submitted in February 2013;
- The Letter of Intent was issued to the contractor in March 2013;
- Council received a report regarding the inclusion of 15 Brand Street in April 2013;
- The second Development Agreement, including 15 Brand Street in the project, was signed in September 2013. This was still largely based on feasibility studies and is due to end in June 2015;
- The contractor was appointed in September 2013.

Development Agreement Process

- The Development Agreement consisted of a number of documents which set out the legal obligations on the parties, from the beginning to the end of the development;
- An overview of the key stages in the Development Agreement appeared in Paragraphs 8.2 and 8.3 of Annexe 1 of the Part I report. It stated that the following sequential events would occur:
 - NHDC would appoint the Architect;
 - NHDC would appoint the Building Contractor;
 - HTHL would acquire 14 and 15 Brand Street and allow NHDC access to the site for the purpose of the Development;
 - NHDC would carry out the Development;
 - HTHL would fit out the kitchen for the Café at its own cost;
 - The architect would confirm completion of the Development;
 - HTHL would pay its contribution to the Building Contractor;
 - HTHL would transfer 14 and 15 Brand Street to the Trust;
 - NHDC would grant HTHL a Lease in the agreed form and would also enter into the Community Use and Management Agreement.
- The Development Agreement also dealt with ancillary matters such as dispute resolution, liaison arrangements, and the ability for the Agreement to be used as financial security by HTHL along with other standard clauses for a legal agreement of this nature.

Hitchin Town Hall Limited Outstanding Loan

- At a meeting held on 19 September 2012 HTHL requested Council consider granting a loan to cover a number of legal expenses for which it did not have the resources to cover until its planned fundraising activity commenced following commencement of construction estimated to be April 2013;

- The terms of the loan granted were:
 - The loan will be up to a maximum of £20,000;
 - Amounts will be paid to HTHL on presentation to the Council of copy invoices addressed to HTHL, up to the value of those invoices and £20,000 as a maximum;
 - The loan will be subject to an interest charge of 3.2% per annum, calculated on a daily basis from the day amounts are paid;
 - The Directors of HTHL will undertake to repay this sum as soon as practicable, with final repayment no later than the day when HTHL received the final loan and grant from ACF;
 - To this end HTHL will make staged repayments at an amount that is affordable, but at a minimum of £1,000 per repayment, on a quarterly basis from June 2013.
- The payments detailed in the final bullet point above had not been made;
- Fundraising by HTHL should have started prior to June 2012 in order to allow repayments to start.

The Strategic Director of Customer Services informed Members that further issues and answers to some of their questions may be considered during the confidential (Part 2) part of the meeting.

Members asked questions and commented on the report and presentation as follows:

Purpose of the Overview and Scrutiny Meetings

A Member queried the purpose of this meeting and suggested that the Committee may like to see Minutes of the Project Board meetings in order to assess what actions had been taken.

The Chairman clarified that the meeting was to impart information to Members and listen to testimony and, although the Recommendation was to note the report, the Overview and Scrutiny Committee could add resolutions to this, if they so wished.

Meetings of the Project Board

Members noted Hitchin Town Hall Limited's claims that they had found it difficult to talk to Officers and to attend meetings often called at short notice and asked whether these complaints had merit. They asked how many meetings had taken place and how many had been of an urgent nature.

The Strategic Director of Customer Services advised that some meetings of Project Board had been called at short notice, but these were only when urgent items had to be discussed. Most of the 26 meetings had been arranged in advance around key stages, with the dates and minutes published on the NHDC website. He confirmed he would provide Members with an Information Note detailing these and other meetings.

The Chief Executive advised that NHDC had been mindful of the requirements of the Development Agreement, particularly in respect of the confidentiality requirements. In responding to a point about HTHL's requests for meetings with the Leader and Chief Executive he stated that he had been at many meetings with Hitchin Town Hall Limited and had only refused to attend one meeting where unacceptable pre-conditions had been made by HTHL.

Finance

A member asked whether, in addition to the agreement between NHDC and HTHL, there was an agreement with SIB and asked for confirmation regarding the NHDC loan.

The Strategic Director of Customer Services advised that a charge was contained in the Development Agreement, which the Council had agreed to and that the provisions of the loan were such that the repayments were affordable.

The Put Option, demanded as a 'non negotiable' by Hitchin Town Hall Ltd at the request of ACF, was described in Paragraph 8.4 of the report and set out trigger events and the circumstances when NHDC would repay any expense of HTHL.

Museum Storage

Members asked at what stage of the development had some of the museum storage area changed into a plant room.

The Strategic Director of Customer Services advised that the provision of storage had always been a feature of the project and still remained so. It was identified at an early stage in the development that plant equipment would be required and the design construction group had been consulted. Works were on-going.

The Stage

Members noted that relationships between the parties were at a crucial point and that the main issue appeared to be regarding the wall built across the stage to provide storage. They queried whether Hitchin Town Hall had been consulted regarding the layout of the stage.

The Strategic Director of Customer Services advised that there had been no substantive change to the layout of the agreed design set out in the Development Agreement.

The Monitoring Officer informed Members that the Development Agreement had taken a substantial amount of time to negotiate and agree. The process for dealing with specific design issues were contained within the terms of the agreement.

Future of the Project

Members noted that it seemed that the project, as originally conceived, would not happen and that it was now necessary to focus on the future in order to get an end result, rather than blame. It was suggested that some consideration of the history of the development may inform the way forward.

RESOLVED: That the contents of the report entitled "Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Ltd" be noted.

REASON FOR DECISION: To provide Members with the opportunity to consider the history and context of this project prior to Council determining the way forward at a future meeting.

71. DEVELOPMENT AGREEMENT: NORTH HERTFORDSHIRE DISTRICT COUNCIL & HITCHIN TOWN HALL LTD

Councillor Lynda Needham, Leader of the Council, made a brief statement about the current and on-going risks regarding the development of Hitchin Town Hall as a District Museum and Community Facility.

Councillor Tony Hunter, Portfolio Holder for Community Engagement and Rural Affairs and Project Board Member, made a statement about the work undertaken by the Council to enable the project to be completed.

The Strategic Director of Customer Services gave a PowerPoint presentation regarding the report entitled Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Limited.

There was some debate by Members and it was:

RESOLVED:

- (1) That the contents of the report entitled "Development Agreement: North Hertfordshire District Council & Hitchin Town Hall Ltd" be noted;
- (2) That, once matters regarding the Development Agreement between North Hertfordshire District Council and Hitchin Town Hall Limited had progressed, a further report be prepared for consideration by the Overview and Scrutiny Committee;
- (3) The Overview and Scrutiny Committee supported completion of the Hitchin Town Hall as a District Museum and Community Facility;

- (4) That, at a later date, the Overview and Scrutiny Committee to consider the approach of NHDC to larger projects.

REASON FOR DECISION: To provide Members with the opportunity to consider the history and context of this project prior to Council determining the way forward at a future meeting.