

Birmingham City Council

Report to Cabinet

25th April 2023



Subject: Highbury Estate – Heritage Lottery Fund Bid Support and Estate Management

Report of: Strategic Director Council Management

Relevant Cabinet Member: Councillor Ian Ward, Leader of the Council

Relevant O & S Chair(s): Councillor Akhlaq Ahmed - Resources

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Moseley and Kings Heath		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 011084/2023		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1 Executive Summary

- 1.1 On 18 September 2018, and on 13 October 2020, Cabinet approved capital funding of £2.0m as match-funding and an underwrite of a £1m fundraising target in support of the grant funding bids by Chamberlain Highbury Trust (CHT) towards the full refurbishment of Highbury. This funding was “subject to the production of a satisfactory business case by the Corporate Director; Finance and Governance [now Strategic Director Council Management] which reduces and eventually eliminates the ongoing revenue cost to the Council”.

- 1.2 The full application to National Lottery Heritage Fund (NLHF) is due by 17 August 2023 with a mid-term review on 18 May 2023 – by then, the Council and CHT must demonstrate that the conditions of NLHF have been met, this will include sufficient total funding sources identified.
- 1.3 CHT has appointed a Project Manager, Focus Consultants who in turn have engaged, on behalf of CHT, the necessary section specialists for the project. A recent end of Royal Institute of British Architects (RIBA) Stage 2, Concept Design meeting was held by CHT on 23 March 2023, presenting work to date on architectural and landscape design and business planning. Project costs were updated, scope discussed in detail and the need for additional funding to complete the project confirmed. The NLHF has been approached to increase the grant award. BCC in turn, are requested to maintain the match level for the project as a proportion of total costs and therefore to increase both the grant and the fundraising underwrite.
- 1.4 The Council as existing Trustee requires approvals to further continue the preparation and development work for the main project.

2 Recommendations

Cabinet is requested to:

- 2.1 Authorise the provision of an additional £1.500m grant funding funded from corporate resources as match to support an increased bid of £4.632m by CHT jointly with BCC to the National Lottery Heritage Fund (NLHF). This increases the total grant from the City Council to £3.500m, including £0.150m for the development phase.
- 2.2 Authorise the underwrite of a further £1.000m of fundraising by the CHT, taking the total underwrite to £2.000m in support of the NLHF bid for grant funding for the refurbishment of Highbury Hall.
- 2.3 Authorise the Strategic Director Place, Prosperity and Sustainability (PPS) to submit a grant application to NLHF jointly with CHT for full delivery grant of £4.632m
- 2.4 Authorise the Strategic Director PPS to accept the NLHF grant and to place orders and disbursements as appropriate to complete the Highbury project, noting the inclusion of a procurement of capital works contractors for both the mansion and landscape up to a total value of £9.600m, subject to successful Delivery Phase fundings from NLHF.
- 2.5 Approve the release of funding for development stage fees up to and including RIBA Stage 3.

- 2.6 Authorise the Director Council Management to update the Memorandum of Understanding (MoU) between the Council and CHT as required prior to the full application to NLHF in August and as required during the project delivery.
- 2.7 Authorise the novation of the CHT appointed professional team (Architectural Design Team, Interpretation Planner and Designer, Quantity Surveyor, Project Manager, Business Planner, Evaluation Consultant) from CHT to the Council, PPS Directorate, subject to successful Delivery Phase funding from NLHF.
- 2.8 Notes that the balance of the £2.000m sum approved in September 2018 as match funding towards the Highbury Hall restoration and refurbishment works is still subject to the submission of a satisfactory business case to be approved by the Director Council Management which reduces and eventually eliminates the ongoing revenue cost to the Council. This sustainable business proposition will also form part of the final NLHF submission by CHT.
- 2.9 Notes that there remains approval to drawdown of up to £0.150m for the development phase from the £2.000m capital funding allocated by Cabinet on 18 September 2018, subject to successful NHLF funding approval, noting that, should the project not proceed to delivery stage then this capital sum becomes repayable to the council. To date £0.070m of the £0.150m has been drawn down.
- 2.10 Authorises the City Solicitor to negotiate, execute and complete all relevant documentation to give effect to the above recommendations.

3 Background

- 3.1 The Highbury Estate comprises approximately 13.03 hectares (32.2 acres) of park land including 'Highbury' and Chamberlain House and three lodges. The estate was gifted by the trustees of the Right Honourable Joseph Chamberlain on 31st March 1932 and is held in trust as Registered Charity no 1039194 since 1994.
- 3.2 Highbury is a Grade II* Listed building. Birmingham City Council is the sole corporate trustee and ultimately responsible for the building and other assets on the Highbury Estate. The City Council's Trusts & Charities Committee (T & CC) which manages trust properties including the Highbury Trust is an internal arrangement and T&CC has only minor delegations with all major decisions including disposals being the responsibility of Full Council sitting as 'Council as Trustee'. For many years the building has been operated as a wedding/conference centre by Civic Catering. Civic Catering comply on behalf of the Highbury Trust with the current requirement set by the Charity Commission for a minimum of 12 days free public access to the building.

- 3.3 The Charity Commission in 2010 challenged the then governance arrangements arguing that the building was being operated for the benefit of the City Council and required stronger separation for its Trust purposes. To effect this T&CC have developed and help put in place the Chamberlain Highbury Trust (CHT) with a Board of Trustees to operate and manage the premises and in particular bring forward proposals for a much needed full refurbishment of the premises. This framework has been ratified in reports to Council as Trustee. As managing trustees, CHT will also be granted a long lease to occupy the premises and are in the process with the council of finalising this agreement.
- 3.4 In recent years the income from Civic Catering and other events and activities has been insufficient to cover costs of maintenance meaning that the building continues to deteriorate and the building was placed on the Historic England 'At Risk Register' in January 2018.
- 3.5 To address the increasing risk to this Listed building and to safeguard its historic interiors pending the start of the full refurbishment, the council has carried out essential early works to the roof, rainwater goods and addressed asbestos issues in the building.
- 3.6 In October 2020, the date of the previous Cabinet report, the estimated total cost of the refurbishment was £8.000m. Since then more detailed design and estimation work has been carried out and the project is now at RIBA Stage 2 with a more detailed costing estimate at £11.070m (excl VAT). This cost estimate assumes all VAT can be recovered. This position is currently being reviewed taking account of the final structure of the transaction.

CHT has been successful in its bid for a Development Phase grant to the NLHF in September 2021. This provides 59% of the costs of the development of the project up to the end of RIBA 3 Coordinated Design stage, totalling £0.619m. This point is expected to be reached in August 2023 when CHT and the City Council will submit a joint application for a Delivery Phase grant of £4.632m to complete the project (total current cost estimate of £11.070m as noted above). The joint application cannot be submitted after August 2023. This is a fixed deadline.

- 3.7 To date in the Development Phase the following tasks have been completed:
- Appointment of the professional team (Project Manager, Quantity Surveyor, Architectural Design Team, Interpretation Planner and Designer, Business Planner incl. Catering Consultant, Evaluation Consultant and Fundraising Consultant) by CHT.
 - Completion of RIBA 2 Concept Design with associated Cost Plan
 - Carried out a value engineering exercise to reduce the estimated costs from £12.100m to £11.070m

- Development of draft Business Plan for Highbury once the capital works are completed
- Development of a programme of activities to widen access to the site that has clear links to fulfilling the City Council's priorities such as supporting the Council's Everyone's Battle, Everyone's Business Equalities Action Plan
- On going consultation with audiences and the fulfilling of CHT obligations to the Highbury Trust to open the mansion to the public through 20 Open Days a year.
- Development of the fundraising strategy and submission of applications for funding
- Estate review and Charities Commission liaison on sale of surplus properties

3.8 Information on increased project costs

In the Cabinet Report of October 2020, the expected project costs were reported to be £8m. By the time the Development Phase application was submitted in October 2021 these were expected to be £7.66m (excl VAT). Since then, the costs have increased to £12.1m (excl VAT). The additional costs since Development Phase application (i.e. an increase of £4.44m) are due to the following key factors:

Item	Cost increase	Notes
Inflation	£1.600m	This has been adjusted to cover the updated programme and as inflation has risen significantly higher in recent years than was expected when the original costs were prepared in 2018.
Design Development Costs	£1.200m	Items that were not fully understood or considered prior to round one submission e.g. internal & external courtyard, learning areas, function spaces, some circulation spaces, staff and volunteers room, general drainage
Preliminaries	£0.390m	These are on a percentage so increased in line with other costs
Professional Fees	£0.430m	These are on a percentage so increased in line with other costs
Contingency	£0.820m	Additional 10% contingency has been added to reflect RIBA 2 & further design development is expected

3.9 Work has since been carried out to reduce the scope of the project yet not impact on the Business Plan for Highbury, the overall project objectives or the ability to secure NLHF funding. Removing these items has reduced the

project costs down to £11.070m. The results of this exercise were approved by the CHT Board on 23 March 2023. This means that the project is now £3.410m over estimated budget set at the Development Phase application.

- 3.10 CHT has always been mindful of scoping the project properly such that the ongoing maintenance and operational liability does not pass back to the City Council over the longer term and consequently no further capital reductions are considered feasible without longer term business sustainability impact.
- 3.11 As part of the funding package, CHT will also consider the target for fundraising, both in terms of amount and achievability. An appointment has been made to drive this work through over the life of the project however again, in order to be able to provide certainty to the NLHF, the council is asked to increase its underwrite in this regard. A programme of milestones and monitoring will be put in place as the council and CHT work together over the delivery and a view on the likelihood of the use of the underwrite as a top up to the fundraising will be reported through the capital monitoring process.

4 Options considered and Recommended Proposal

- 4.1 Remove areas of the project to reduce it back down to within the original funding envelope of £8.600m e.g. the offices and landscaping works. These are considered income generating elements of the project which, if removed, would adversely affect the sustainable business plan and require future continued council investment. Removal of more community focused elements such as the landscaping is likely to impact the success of the NLHF Delivery Phase funding as community engagement is a key criteria for them. This scope reduction was rejected by CHT Board, NLHF have advised against it and it is not recommended
- 4.2 Accept the additional costs (£3.410m) and maintain the scope of the project Ask NLHF to increase their funding to the overall project costs by £1.360m (from £3.270m to £4.630m) and increase CHT's fundraising target by £2.050m (from £1.590m to £3.640m). The fundraising consultant has carried out a review of sources of funding and the likely value. This increase in target is not considered deliverable. NLHF are unlikely to accept this option as a reliable source of funding unless underwritten by the Council. Underwriting of projects across the country is often an expectation placed on grant applicants by NLHF. CHT will increase its fundraising target but at the same time this then requires an increase in the amount of Council underwrite in order to satisfy NLHF conditions. An increase in fundraising without underwrite would not be acceptable to NLHF and is not recommended.

- 4.3 Not to increase the grant or the underwriting of fundraising. This will result in NLHF also withdrawing from an increase in funding and will either have the same outcome as 4.1 above with NLHF and also CHT likely to withdraw from Highbury. In such an event, the Council as sole Trustee would be required to undertake and fund the works directly. The proposed scheme may have to be altered but the full cost of the refurbishment would fall entirely on the Council and there would still be a requirement to secure a similar managing trustee to fill the CHT role to address the governance issues previously raised by the Charities Commission.
- 4.4 Accept the additional costs (£3.410m) and maintain the scope of the project and ask NLHF to increase their funding, to the overall project costs by £1.360m and match this with an increase the city council's contribution of £1.500m bringing to the total grant funding from the council to £3.500m (of which £0.150m is committed to the development phase costs, and to increase the amount of fundraising underwrite by an additional £1.000m (providing £0.450m headroom if additional fundraising required).
- 4.5 The recommended option is to provide an additional £1.500m grant funding, increase the underwrite of fundraising by a further £1.000m and confirm the council's strong support to a successful NHLF bid.

5 Consultation

- 5.1 The Chairman of Trusts and Charities Committee has been briefed on the proposals promoted by CHT and the works proposed to be undertaken if the bid is successful. Ward Members have not been formally consulted on this proposal but will be included in consultation on any reports progressing from Trusts & Charities Committee to meetings of 'Council as trustee'. Highbury Estate is held in trust and two of the Trustees (Councillor Brigid Jones, Deputy Leader, Bournbrook and Selly Park Ward and Councillor Phil Davis, Billesley Ward) are elected Members.
- 5.2 The Trustees of CHT have made representations for assistance from the City Council and are fully engaged in this proposal. No additional external consultation is envisaged though CHT have fully undertaken considerable public consultation on the refurbishment scheme and the proposals for the future management of Highbury.
- 5.3 The proposal has progressed through and been approved for submission to Cabinet by the Capital Board at its meeting on 9 March 2023.

6 Risk Management

- 6.1 The benefits to the Council include reduced financial risk in relation to the maintenance and repairs of the property held in Trust. As Trustee, the Council will be required to improve and maintain the condition of the building. The City will benefit from a financially sustainable completed scheme and the building will continue to be available as an historic asset for public enjoyment.
- 6.2 Council officers are working alongside CHT in the delivery programme and will act as accountable body to the programme. Regular meetings with CHT and the Project Manager take place. Updates and risks arising from the programme will be reported through Capital Board. A full risk register is maintained by the Project Managers, key risks include inflationary rises and the historic nature of the building fabric once work is underway.

7 Compliance Issues

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The Highbury Estate is held in trust, owned and managed by Birmingham City Council and Highbury Estate is a Registered Charity no 1039194. The City Council has made use of Highbury since the original gifting in 1932. The duty to maintain the asset has rested with the Council as Sole Trustee ever since. The City Council has addressed the concerns raised by the Charity Commission on governance and under investment and has promoted the formation of Chamberlain Highbury Trust to be the managing trustees for the Highbury Estate.
- 7.1.2 Chamberlain Highbury Trust is Registered Charity no. 1169845. The granting of a long lease of 125 years to CHT, allowing the subletting of the premises, has been approved at Council as trustee on 13th March 2018 replacing the earlier approval of a 35 year lease. It was agreed that a grant of a long lease would demonstrate the intended longevity of the CHT in taking forward the management of the Highbury Estate, improve their standing with the funding bodies and better support the proposed NHLF bid. It will also improve the standard of accommodation (and therefore rental levels) for any sublettings that may take place after the refurbishment. The rent is to remain a peppercorn rent only. CHT will be responsible for all revenue costs for the premises from the start of the lease which will follow the completion of works. BCC's funding as current Trustee will be withdrawn in line with the sustainable business plan to be agreed with the Strategic Director Council Management.
- 7.1.3 Contributing to the refurbishment of Highbury will safeguard the premises and support the City Council's Birmingham Heritage Strategy 2016 -2019 and the Birmingham Cultural Strategy 2016 – 2019.

7.2 Legal Implications

- 7.2.1 The power to acquire, dispose and manage assets in land and property is contained in sections 120 and 123 of the Local Government Act 1972.
- 7.2.2 Section 111 of the Local Government Act 1972 allows the Council to do anything (whether or not involving the borrowing, expenditure or lending of money or the acquisition or disposal of any of its property) which is calculated to facilitate or is conducive or incidental to the discharge of its functions.
- 7.2.3 The General Power of Competence under the Localism Act 2011, sections 1 to 8 also gives local authorities, “the power to do anything that individuals generally may do” as long as it acts lawfully.

7.3 Financial Implications

- 7.3.1 The £1.500m increase in grant from the City Council for the delivery phase to a total grant of £3.350m together with additional grant bids, volunteer time and secured funding will provide the 60% required match for the NLHF bid and will be funded from Corporate Capital resources, interest also funded corporately. This is in addition to £0.150m for the development phase granted in 2018 as part of the £2.000m approval.

The £1.000m increase in the provision to a total of £2.000m to underwrite the fundraising will, if called upon, be funded from Corporate Capital Resources. The term of requirement is expected to be over a 4 year period which is the fundraising term for the project and will be drawn down as required by the capital works and repaid from donations and grant aid received as a result of the fundraising. Should these activities fall short of the CHT target then the capital fund will be required.

- 7.3.2 The duty to maintain the Highbury Estate rests with the City Council as Sole Trustee, but by providing this match funding commitment to CHT, the Council is demonstrating its commitment to the future sustainability of Highbury. On the final confirmation of award from NLHF CHT will enter into the long lease and management and repair responsibilities will pass to them from the council. In consultation with CHT, the Director Council Management will produce a business plan which demonstrates how the revenue cost to the Council can be reduced and removed completely following a successful grant application.
- 7.3.3 At today's interest rates £3.5m would cost £0.240m per annum over a 20-yr annuity. Current maintenance costs vary year to year but are increasing,

during 2022/23 the boiler system ceased to function, roofing repairs and urgent maintenance were required.

- 7.3.4 The City Council will enter into arrangements with CHT to act as accountable body and defray the full project cost on their behalf, which will include £3.350m of capital expenditure funded by the City Council together the receipt of funds from NLHF, any funds already held by CHT or the Council against the Highbury Trust (eg receipts from estate sales) and amounts achieved through fundraising (or as underwrite to this).

7.4 Procurement Implications (if required)

- 7.4.1 There are no procurement implications with the recommendations of this report. The project has already appointed the necessary professional services such as architect, surveyors, project managers, etc. The next significant phase around procurement will be for the procurement of main contractor to undertake the construction phase of the works, the route to market around appointment is yet to be determined and will be included in a future Planned Procurement Activity report to Cabinet. The requirements of the Birmingham Business Charter for Social Responsibility will form part of the contracts and expenditure within this project as appropriate. All council contracting will be carried out in line with the Council's Constitution and Procurement and Contract Governance Rules.
- 7.4.2 It is expected that Acivico will provide a supervisory role to ensure that value for money is obtained in all procurements.

7.5 Human Resources Implications (if any)

- 7.5.1 N/A

7.6 Public Sector Equality Duty

- 7.6.1 The principal benefit of supporting the essential works through the match funding requirements will be to ensure the premises remain open to the public in the long term. A copy of the Equality Act 2010 – Public Sector Duty statement was appended to the Cabinet report of 18 September 2018 in relation to the exact same project and NHLF bid and refurbishment works at Highbury Hall. An initial screening was undertaken which indicated that a full Equalities Assessment was not required as the proposals provide improved facilities for everyone and all opportunities for promoting equality have been taken. (Reference ID EQUA69).

9 **Appendices**
none

10 **Background Documents**

- 10.1 Cabinet report of 18 September 2018 - Highbury Estate - Matchfunding For Heritage Lottery Fund Bid For The Refurbishment Of Highbury - Ref: 005278/2018
- 10.2 Cabinet report of 13 October 2020 - Highbury Estate – Heritage Lottery Fund Bid Support and Accountable Body Request