

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:
Report of:
Date of Decision:
SUBJECT:

CABINET

CORPORATE DIRECTOR, ECONOMY
18th September 2018
HIGHBURY ESTATE - MATCHFUNDING FOR
HERITAGE LOTTERY FUND BID FOR THE
REFURBISHMENT OF HIGHBURY
Relevant Forward Plan Ref: 005278/2018
Chief Executive approved ☐
O&S Chair approved ☐
Councillor Ian Ward – Leader of the Council
Councillor Brett O'Reilly – Finance and Resources
Councillor Tahir Ali – Economy and Skills
Councillor Sir Albert Bore - Resources
Moseley

Key Decision: Yes
If not in the Forward Plan:
(please "X" box)
Relevant Cabinet Member:

Relevant O&S Chair:

Wards affected:

1. Purpose of report:

1.1 To seek approval for the allocation of capital funding as match towards future grant bids to external funders such as the Heritage Lottery Fund (HLF) by the Chamberlain Highbury Trust (CHT) for the proposed refurbishment of the Highbury Estate.

1.2 The accompanying private reports contains commercially confidential information

2. Decision(s) recommended:

That Cabinet :-

- 2.1. Notes that on 28th February 2018, the Leader of the Council jointly with the Corporate Director, Economy approved a report for the award of £0.5m to undertake essential works at Highbury.
- 2.2 Approves a commitment to provide further capital funding of £2.0m as match-funding towards future grant funding bids by Chamberlain Highbury Trust towards the full refurbishment of Highbury subject to the production of a satisfactory business case by the Corporate Director; Finance and Governance which reduces and eventually eliminates the ongoing revenue cost to the Council.
- 2.3. Authorises the Head of City Finance and the City Solicitor (or their delegates) to execute and complete all necessary legal documents required to give effect to 2.2.

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3. Consultation

3.1 Internal

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 (T&CC) to meetings of 'Council as trustee'. Highbury Estate is held in trust and two of the Trustees (Councillor Lisa Trickett, Brandwood & Kings Heath Ward and Councillor Phil Davis, Billesley Ward) are elected Members.

3.2 External

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.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

4.1.1 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.

4.1.2 Chamberlain Highbury Trust is Registered Charity no. 1169845. 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 HLF 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.

4.1.3 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.

4.2 Financial Implications (How will decisions be carried out within existing finances and Resources?)

4.2.1 The provision of £2m capital match-funding will be funded from Corporate Capital Resources. 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. This funding will be used as match funding towards the HLF grant application by CHT for the full refurbishment. Should CHT be successful with their HLF bid in the latest 2018 round, then they will enter into the long lease and management and repair responsibilities will pass to

CHT who will instigate the refurbishment with works commencing in 2020-21. In the event of a successful application, the City Council will look to enter into arrangements with CHT to defray the full project cost on their behalf, which will include £2m of capital expenditure funded by the City Council. Acivico will provide a supervisory role to ensure that value for money is obtained in all procurements.

4.2.2 In the meantime, the City Council is incurring revenue expenditure such as business rates, energy, minor repairs and security off-set by Civic Catering rental income, however the net cost of £0.243m in 2017/18 was a corporate budget pressure. The Assistant Director, Development and Commercial in consultation with CHT and Civic Catering, will produce a business plan which demonstrates how the revenue cost to the Council can be reduced in the near future and removed completely following a successful grant application and the refurbishment works completed.

4.2.3 in the event that the current HLF bid is unsuccessful, then further applications will be required, but the works will be delayed by a least a further year. In the event that CHT is unable to successful drawdown sufficient grant in order to complete the full or majority of refurbishment works then further options will need to be considered and will be subject to a further Cabinet report.

4.3 Legal Implications

4.3.1 The Highbury Estate is held in trust and the trust documents empower the trustees to undertake any actions to best safeguard the assets of the trust. 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. 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. 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 they do not break other laws. If the essential repairs are not undertaken the property will further deteriorate and increase costs. The duty to maintain the asset has always rested with the Council as Sole Trustee.

4.4 Public Sector Equality Duty

4.4.1. The principle 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. The refurbishment scheme identified needs to be carried out as soon as possible as building costs continue to rise and to ensure compliance with both health and safety issues and legislative requirements. A copy of the Equality Act 2010 – Public Sector Duty statement is appended at Appendix 1. An initial screening was undertaken which indicated that a full Equalities Assessment is not required as the proposals provide improved facilities for everyone and all opportunities for promoting equality have been taken. (Reference ID EQUA69).

5. Relevant background/chronology of key events:

5.1 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.

- 5.2 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 decisions being ratified at a meeting of Full Council sitting as 'Council as Trustee'. For many years the building has 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 12 days free public access to the building.
- 5.3 The Charity Commission in 2010 criticised the then governance arrangements since in reality 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 put in place the Chamberlain Highbury Trust 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 they will also be granted a long lease to occupy the premises. The City Council also sought to put in place a lease with Acivico Ltd (Civic Catering) to properly evidence their occupation to the Charity Commission, however this was not completed because of the liability for repairs. Although this lease is not yet complete a market rent is collected from them. Prior to the collection of this rent Highbury Trust had no registered income.
- 5.4 In recent years the only monies available to meet maintenance obligations at Highbury have been the rental income from Civic Catering and this has been insufficient, meaning that the building continues to deteriorate and the building was placed on the Historic England 'At Risk Register' in January 2018.
- 5.5 To address the increasing risk to this Listed building and to safeguard its historic interiors while CHT continue to submit grant funding bids to the HLF for the full refurbishment, the Leader together with the Corporate Director, Economy in February 2018 authorised £0.50m to undertake essential early works to the roof, rainwater goods and to address asbestos issues in the building which is preventing access to some areas and causing consequential damage.
- 5.6 To procure the full refurbishment of Highbury will cost approximately £5.574m which can be best achieved through CHT and enabling them to succeed in winning external bid processes, most likely with the HLF. The proposal for the City Council to top up the matchfunding element of the HLF bid is essential at this stage for the bid to have any likelihood of success and provides the mechanism by which the overall cost to the Council will be most effectively contained. The refurbishment of Highbury will remain essential even should the bid submitted to the 2018 bid round not be successful.

6. Evaluation of alternative option(s):

- 6.1 Rely on existing revenue budgets to maintain the premises – the building will continue to deteriorate as City Council revenue budgets are currently inadequate to fund the increasing maintenance requirements. Further serious water penetration and failure of services may require closure affecting revenue income and resulting in damage to the City Council reputation as Sole Trustee for the Highbury Estate.
- 6.2 Allowing the Grade II* listed premises to become vacant would exacerbate the maintenance issues, leave the property unguarded and at very high risk and would remove

the sole opportunity for generating revenue to offset the majority of expenses. However, if successful in their HLF bid the premises would under the management of CHT be closed for the duration of the full refurbishment and when reopened would have new subtenants and lease structures, removing all budget pressures for the estate from the City Council. Once the works are complete then CHT will be responsible for the management and repair of the premises.

- 6.3 If CHT withdraw from Highbury and the Council are required to undertake the works directly the proposed scheme may have to be altered but the full cost of the refurbishment will fall entirely on the Council and there would still be a requirement to secure a similar managing trustees to fill the CHT role to address the governance issues.

7. Reasons for Decision(s):

- 7.1 To support the grant bidding process undertaken through CHT by providing a commitment to provide up to £2m of match-funding for the refurbishment of Highbury in order to comply with the City Council legal obligations as Trustee and to minimise its ongoing financial liability.

Signatures

Date

Councillor Ian Ward
Leader of the Council

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Cabinet Member Cllr Brett O'Reilly
Finance and Resources

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Waheed Nazir
Corporate Director, Economy

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List of Background Documents used to compile this Report:

1. Relevant Officer's files on the matter, save for confidential documents.

List of Appendices accompanying this Report (if any):

1. Equality Act 2010 – Public Sector Duty statement (Reference ID EQUA69)