

Report for: **Special Overview and Scrutiny Committee on 8th November 2016**

Title: **Further information in response to “Call-in” of decision of Cabinet of 18th October 2016 for Preferred Bidder to Secure the Future of Hornsey Town Hall**

Report authorised by : **Lyn Garner, Director Regeneration, Planning & Development**

Lead Officer: **Jon McGrath, Assistant Director Property & Capital Projects**

Ward(s) affected: **Crouch End**

**Report for Key/
Non Key Decision:** **Key**

1. Describe the issue under consideration

- 1.1** The purpose of this report is to provide further information to support the Committee’s scrutiny of the issues raised in both of the “Call-ins” of the Cabinet decision of 18th October 2016 in respect of Hornsey Town Hall recommendation of the preferred bidder.

2. Cabinet Member introduction

- 2.1** The Cabinet’s most recent decision on the future of Hornsey Town Hall has been referred to the Scrutiny Committee. Officers have carefully gone through the issues raised in the two call-ins and have set out a full response in this report, so I will not get into detail on these issues here.

- 2.2** As the Cabinet Member responsible, I want to make the following three broader points:

- a) Members of Scrutiny must keep in mind the history of this building and the lessons it teaches us about how challenging it is. The council has been trying for ten years to find an organisation to take on the Town Hall and give it a secure future. Despite huge amounts of hard work by the council and the community, all plans to date have failed because of the cost and complexity of bringing this historic building back into use. Mountview Academy of Theatre Arts worked solidly for four years on an exciting proposal to turn the building into a new home for their theatre school. Unfortunately the sheer cost of restoration and refurbishment was beyond what could be afforded and they had to withdraw in January 2015.

It was not clear that any scheme could be made to work, so the Cabinet having a financially sustainable proposal from FEC being recommended to it represents a really good future for the Town Hall.

- b) Members of Scrutiny should also keep in mind the widely communicated priorities for the building. The strong desire expressed by local groups and people in Crouch End has been to see this crumbling building saved for future generations, for it to be publicly accessible and for it to have community use, focused on the arts, so that everyone can enjoy it. The recommended bid does exactly that – it offers significant external investment in the building, the lease will guarantee public access to the square and to key parts of the building and the bid proposes a community arts centre to ensure residents can make use of the Town Hall.

I am aware that some councillors want to see more community use, and/or more affordable housing, however, Scrutiny Committee members need to be clear that the recent competition has proved that it is impossible to secure investment in the heritage building, more community use and affordable housing. The Cabinet paper agreed in summer of 2015 set out clearly what the priorities were, and in advance of Cabinet these priorities were communicated at a public meeting, three workshops with Crouch End community organisations and in a public exhibition at Hornsey Library. We have good, clear priorities, the recommended bid meets delivers these – we need to press and get the restoration and opening of the Town Hall going as soon as possible.

- c) It is important to remember the very detailed and rigorous process that the Council has been through. Bids were assessed by a range of expert panels, made up of senior officers from across various council departments, external procurement advisors and Crouch End residents from the Hornsey Town Hall Creative Trust.

Bidders were repeatedly challenged through the competitive dialogue process and subjected to intense scrutiny, including by independent lawyers and independent financial advisors. At the end of this process, FEC was found to have scored the highest marks, and in fact scored 15.6% higher than the unsuccessful bidder.

- 2.3** In conclusion, the process has been tough, robust, fair and objective. We set out to find a plan that combined meaningful community use with financial sustainability and we have achieved that with an excellent plan that saves the Town Hall for the future while opening it up to generations of Crouch End residents. Finally, as set out by officers in this report, this is an exciting plan that is in line with the Council's policies.

3. Recommendations

- 3.1** Committee are asked to note and consider all details contained within this report when making a decision on the most appropriate course of action for the Hornsey Town Hall decision.

4. Reasons for Call-In

4.1 “We believe that the proposal put forward at the Cabinet meeting is not the best option for Hornsey Town Hall.” (Call-in 1)

This reason for call-in has no context or explanation for why this is not the best option and therefore appears to be a subjective opinion, which does not consider the wider objective of the Hornsey Town Hall site.

In June 2015 Haringey’s Cabinet approved the OJEU regulated public procurement as the best and most transparent route to securing a long term sustainable future for Hornsey Town Hall and agreed the following underpinning objectives:

- Restore Hornsey Town Hall in a way that respects its Grade II* listed building status and safeguard its future by providing financially sustainable spaces fit for purpose.
- Facilitate cultural, community and other activities in the Town Hall, provide public access to the building and make a positive contribution to the local economy.
- Remove the Council’s ongoing liability for the building.
- The Town Hall square will be improved by integration into the final scheme, retaining public use.

This decision was debated at Full Council on 23rd November 2015, with the key challenge being that community use must be secured. It was communicated by the Lead Member and Ward Councillors that community use was a mandatory minimum requirement of any tender and bidders were encouraged through the evaluation mechanism to provide an enhanced community offer (this was the highest scoring element of the evaluation).

These agreed objectives have not changed, the procurement process has now concluded and the Cabinet Report from October 18th 2016 sets out how the above objectives have been met. The preferred bidder scored 15.6% higher than the unsuccessful bidder (key areas where the successful bidder scored higher are set out within the Cabinet Report), demonstrating this is the best option for the future of Hornsey Town Hall taking into consideration the objectives agreed at Cabinet.

4.2 “We are concerned that at the final stage there were only two bidders for the Town Hall site.” (Call-in 1)

A robust procurement process has taken place, which has been moderated by external legal, technical and financial advisers and overseen by Haringey’s Procurement team.

Three bidders were taken through to Final Tender stage, as these were the only bidders to meet and pass the relevant evaluation criteria and also continue

to have an appetite for the project. Following the result of the EU referendum, one of these bidders withdrew from the process leaving two bidders.

Having two bidders at final tender stage is not untypical in such circumstances (bidding organisations are constantly evaluating the risk/reward profile attached to their bid costs and as a result bidders often withdraw part way through).

4.3 “We are concerned that the council has recently allocated millions of pounds for a new corporate office/HQ whilst it has been stated the council does not have the money to repair Hornsey Town Hall.” (Call-in 1)

As set out above, the June 2015 Cabinet approval was for the OJEU regulated procurement route to go ahead, which was based upon the Council not funding refurbishment works for the Town Hall. The Council granted planning permission in 2010, which has since been implemented for refurbishment of the town hall and an associated development on the car park to the rear of the Town Hall comprising 123 residential units. This new build element and extensions and alterations to the Town Hall were justified in order to cross subsidise the repairs and refurbishment of the Listed Buildings. Effectively the Council has thereby foregone a substantial capital receipt in order to fund the Town Hall refurbishment.

It is incorrect to say that the council has allocated millions for new office building.

The council will require new office premises as part of the development of council owned sites in Wood Green many of which are now unfit for purpose and costing substantial amounts to maintain. The decision taken by Cabinet recently was to purchase a local site for that purpose and ask the Haringey Development Vehicle bidders to include costs of re-provision in their bids to be determined later this year.

4.4 “We are concerned that public access to the Hall, Square and Green are dependent on the preferred bidder sticking to the terms of the agreement and that no details have been provided as to a break clause or other consequences to the bidder if they fail to allow public access.” (Call-in 1)

The lease will contain a specific obligation to secure public access to the Town Hall, Square and Green and this obligation will be guaranteed by the parent company guarantor. Any failure to comply with this obligation at any time during the lease term therefore, as with any of the other lease obligations, would result in the tenant being at risk of losing the whole of their investment in the Town Hall. The Council is entirely confident therefore that the lease obligations and consequences of any breach will be sufficiently robust to ensure such public access will be maintained.

4.5 “This decision agreed the sale of the Hornsey Town Hall site to Far East Consortium.” (Call-in 2)

This is incorrect; the Council will be entering into a long lease (as set out within the Cabinet Report), it will not be selling the freehold interest of site.

4.6 “Haringey Council, being the owners of the Hornsey Town Hall site, had unfettered opportunity to apply for new planning permission after the agreement with Mountview fell through.” (Call-in 2)

Haringey had no reason to apply for a new consent when:

- a. There is an existing consent, which is active and therefore could be implemented at any time (a new consent does not replace an old one).
- b. A new consent would not have enhanced the delivery of any of the Cabinet’s agreed objectives for Hornsey Town Hall, nor would it have added any financial value to the asset.
- c. A new consent would have cost the Council substantial revenue and would have further delayed the delivery programme.
- d. The details of the future scheme were unknown and unknowable until the procurement had been run therefore it is unclear what a new permission would be for.
- e. There is no guarantee that a new application would have received consent.

4.7 “Underpinning the decision to sell is an expectation – or an intention – that only 4 units of affordable housing will be built on this site.” (Call-in 2)

It is important to be clear that the council is not selling the freehold interest of the site. This option was considered and rejected. Instead the Council is proposing a long lease, which gives the Council greater control over the use of the building.

Affordable housing is important to Haringey and we recognise the importance of building more of this type of housing in the borough. However HTH has been recognised as a challenging project because of the responsibility of carrying out the necessary extensive works to improve a dilapidated Grade II* listed building (including bringing it off the “Heritage at Risk” register) and finding a financially sustainable long term operation for the building has significant cost implications.

In addition to this, the project has other requirements such as facilitating community access and use, making this a very unique project where heritage restoration and community activity have been prioritised over additional affordable housing. The Site Allocation for the Hornsey Town Hall site in the draft Site Allocations DPD allocates the site for restoration of the existing Listed Building with enabling residential development on the car parking areas.

Any increase in the amount of affordable housing within the scheme will impact on the viability of the project and if a new planning application is brought forward this viability will be assessed to determine the level of affordable

housing that can be secured. The mechanism for controlling this is through planning.

The Cabinet Member for Housing, Regeneration & Planning has discussed the scheme twice recently with the Deputy Mayor for Housing at the GLA. We will discuss with the GLA and the bidder whether it would be possible to increase the amount of affordable, but this is a separate discussion. And, given the live planning consent, this is something we can discuss, but cannot impose.

4.8 “The decision delivers an outcome outside of the policy framework Priority 5 of our Corporate Plan “Creating mixed and inclusive neighbourhoods.” (Call-in 2)

Please see the Monitoring Officer Report, which responds on this statement.

4.9 “The decision is taken in contravention of the key policy objective within the Housing Strategy.” (Call-in 2)

Please see the Monitoring Officer Report, which responds on this statement

4.10 “Decision taken in contravention of Corporate Plan policy outcome “Value for money.” (Call-in 2)

Please see the Monitoring Officer Report, which responds on this statement

4.11 “Decision taken in contravention of Local Plan Policy SP2.” (Call-in 2)

Please see the Monitoring Officer Report, which responds on this statement

4.12 “The report consists of a number of inconsistencies that the Cabinet may have relied upon when coming to its decision.”

The planning related references within the Cabinet Report were clarified by Councillor Strickland to Cabinet Members at the Cabinet meeting (as set out within the minutes) and therefore the incorrect reference within section 2.5 of the Cabinet Report was rectified. Cabinet did not rely upon any perceived inconsistencies when coming to its decision.

For absolute clarity:

- There were three key areas where the unsuccessful bidder scored less than the successful bidder and these included planning strategy (it should be noted that there was a total of 5% available for the planning question - bidder's scores are confidential).
- The planning question within the tender asked bidders to set out their proposed planning strategies and these were assessed with specific regards to risks associated with the planning strategy.
- The evaluation was undertaken by a panel of evaluators and moderated by external legal advisers. The Council is confident that that all of the scores achieved were fair and correct.

- The unsuccessful bidder proposed a higher risk strategy because of the increased density on the site and the assessment of this was based upon the strategy of dealing with the proposed changes from the existing consent. It should be noted that the Leader explained in the Cabinet meeting that objections to the original planning permission were based on the scale of the new build residential therefore any increased mass on site poses a risk.
- This does not mean there are no planning risks attached to the successful bid, however the unsuccessful bidder set out a strategy that was considered to be riskier because it increased height and which therefore scored less marks. Committee should be reminded again that the scores were moderated by external legal advisers.
- The route for a new scheme (if section 73 or new consent) will be determined through future pre-application meetings as the necessary route is subject to confirmation of the detail proposed.

The detail for the call-in states that at the Cabinet meeting “it was explicitly said the planning strategy of the preferred bidder had no risk...”, which is incorrect as this was not said at the Cabinet meeting and Cabinet did not make its decision on this basis.

5. Variation of Action Proposed

5.1 “The local community or a community led organisation, takes on the Town Hall ensuring public access... (Call-in 1)”

Any party within the EU was free to participate in the process at the start of the OJEU Competitive Dialogue procedure. The Council did not receive any applications from community-led organisations at this stage. The Council subsequently shortlisted parties through the course of the process in accordance with the published evaluation criteria.

In any case this proposed action goes against the Cabinet decision obtained in June 2015 and does not meet the Council’s objectives for this project and should therefore not be considered further by Committee.

As set out in section 4.1 one of the Council’s objectives for this project is to remove the Council’s on-going liability for the building and this proposed solution for HTH would not meet this objective, which is why it was not implemented prior to the June 2015 Cabinet decision. A community led organisation would find it very difficult to legally commit (in the ways required to demonstrate this objective is met) to covering all on-going costs for the building.

As set out in section 4.1 one of the Council’s objectives for this project is to restore the Town Hall and this proposed alternative course of action would not meet this objective. A condition placed on the existing planning consent links the refurbishment of Hornsey Town Hall to the residential development to prevent occupation of the residential new blocks on the site until the listed building has been refurbished. This places restrictions on any land sale to a developer as they are tied to the programme for the main Hornsey Town Hall works (in this situation the risk would be too high for the Council to be legally

responsible for the Town Hall works being completed). In addition to this, the aspiration behind this project is not to only complete minimal repair works, the building needs to be safeguarded and to ensure maximum utilisation it needs to be enhanced as this is not a short term project, it is long term.

As set out in section 4.1 one of the Council's objectives for this project is to secure improvements to the square and this proposed alternative course of action would not meet this objective.

5.2 "The Council uses funds from the capital budget to renovate the Town Hall..." (Call-in 1)

There is no available funding for this from the Council's capital budget. As stated above, the Council is effectively foregoing a receipt in order to secure the restoration and sustainable future of a much loved heritage building while protecting community access. Following assessment of the various options available, the Council's Cabinet confirmed their position in June 2015 that this OJEU procurement route was the best option to secure a long term future for the Town Hall site.

5.3 "The bidding process for Hornsey Town Hall reopens." (Call-in 1)

It is unclear what is being proposed here. The Council cannot abandon the current procurement process, not least because it would open itself up to the prospect of legal challenges.

The current procurement has concluded and the final tenders have been evaluated in accordance with the published evaluation criteria. There is no rational basis for the Council to "reopen" the process. Any change to the Council's existing evaluation criteria would also be subject to a procurement challenge.

It is also unclear whether "bidding process" is being equated with a new procurement procedure; if so, then in addition to the above points (both of which remain valid), there is the further concern a new procedure will not achieve a better outcome and could in fact result in a considerably worse outcome. It will also inevitably result in significant delay, which is entirely contrary to the Council's objective for the Town Hall.

The procurement has been run in line with the June 2015 Cabinet approval and demonstrated that the objectives have been met so as set out above there would likely be a legal challenge if the criteria is now changed and another procurement commences (Committee should note there is no budget available for an additional procurement or delay).

5.4 "To agree that the agreement to sell to the preferred bidder is predicated upon an expectation that only 4 affordable units will be built on the Hornsey Town Hall site." (Call-in 2)

The Cabinet reports make clear that the freehold of the Town Hall is not being sold. This option was considered but rejected. Instead, a long lease is being proposed which offers some greater control for the Council over use of the building.

This does not appear to be a valid proposed course of action and therefore should not be considered further by Committee.

As set out in section 4.6, this is an existing planning consent, which has been implemented and it was clear in the June 2015 Cabinet Report that there are only 4 affordable units within the consent.

5.5 That the Council deciding to build only 4 affordable units on the Hornsey Town Hall site falls outside of the policy framework of (Call-in 2):
i. The Corporate Plan; and/or
ii. The Housing Strategy; and/or
iii. The Local Plan

As set out in 4.8 and 4.10, Haringey's Corporate Plan does not form part of the policy framework therefore it cannot be considered that the decision falls outside of the policy framework in this regard.

As set out in 4.9, the Housing Strategy quoted has not yet been adopted and therefore is not within the policy framework therefore it cannot be considered that the decision falls outside of the policy framework in this regard.

As set out in 4.11, the Local Plan sets out Borough wide targets and these are targets for the whole borough on an aggregate basis rather than requirements for each individual site therefore the outcome of the decision does not fall outside of the policy framework in regards to the Local Plan (as confirmed by Haringey's Chief Planning Officer).

It is crucial that Member understand that the search for a partner has already taken over a decade and involved failed plans, and this bidding process saw a bidder pull out because of the economic uncertainty created by Brexit. A new bidding process would add several years to finding a partner, add significant costs to the Council of funding a procurement and covering running costs of the buildings and given the context it would be a very high risk approach,

5.6 "To agree that – since this is a decision taken outside of the policy framework – there are insufficient guarantees that the expected mitigations used to justify taking this decision can be delivered." (Call-in 2)

As set out within this report and the Monitoring Officer Report, the outcomes of the decision do not fall outside of the policy framework.

5.7 “To refer the report back to the Cabinet or Full Council as it wishes and we ask the Committee (Call-in 2):

- **To instruct the Cabinet to renegotiate levels of affordable housing...**
- **To instruct the Cabinet to add a clause to the contract that confirms exact details of the community offer...**
- **To instruct the Cabinet to add an additional condition to the contract to ensure the preferred bidder keeps to their word with regards to height and density...”**

Committee is not able to instruct the Cabinet, however it is able to make suggestions, however based on the justification and evidence presented in this report it is strongly advised that the Cabinet decision is approved and not subject to any further delay.

In reference to the specific points set out in this proposed course of action we can confirm:

- a) It is not possible to renegotiate levels of affordable housing associated with an existing consent, which was obtained outside of this procurement. Any new planning applications will be assessed on viability and be in the context of the other priorities for this project.
- b) A separate Community Use Agreement will be signed with the preferred bidder that will confirm the parameters for community use and access, in a manner that is consistent with and builds upon the proposals submitted through the course of the competition.
- c) Height and density is a planning matter and the scale of the residential on site has been set by planning. Any proposed amendments to this would need to be reviewed by the Local Planning Authority (as would be the case for any planning application brought forward for the site) and this cannot be guided by a clause within a contract.

6. Background information

6.1 The Cabinet Report from June 2015 acts as background information for the decisions taken by Cabinet when it was agreed the OJEU procurement could commence and the Cabinet Report from October 2016 sets out the details of the procurement process that has been undertaken and the outcomes of this process.

6.2 The Monitoring Officer Report addressing call-in number two is to be read in conjunction with this report.

7. Contribution to strategic outcomes

N/A

8. Statutory Officers comments

8.1 Comments of the Chief Finance Officer and financial implications

N/A

8.2 Comments of the Assistant Director of Corporate Governance and legal implications
N/A

8.3 Equalities and Community Cohesion Comments
N/A

8.4 Head of Procurement Comments
N/A

9. Use of Appendices
N/A

10. Local Government (Access to Information) Act 1985
N/A