

# **BROMSGROVE DISTRICT COUNCIL**

## **CABINET**

**1 OCTOBER 2008**

### **THE FUTURE OF THE MUSEUM**

Responsible Portfolio Holder	Councillor Roger Hollingworth
Responsible Head of Service	Phil Street – Director Projects & Partnerships
Key Decision	

#### **1. SUMMARY**

- 1.1 To consider options for addressing the future of the Norton Collection and the Bromsgrove Museum.

#### **2. RECOMMENDATION**

- 2.1 That Members:

- 2.1.1 decide whether to accept the proposal made by the Consortium; and if not,
- 2.1.2 consider the options contained in this report and decide what action to take.

#### **3. BACKGROUND**

- 3.1 The Norton Collection Trust (“the Trust”) is a registered charity established in 1992 and governed by a trust deed dated 14 September 1992 (“the Deed”). The Council is the sole trustee of the Trust.
- 3.2 The Trust was established to provide for the collection of artefacts accumulated by a member of the public to be available to the people of Bromsgrove. The Deed sets out a number of requirements, some of which are fairly onerous, in relation to the maintenance and display of the Collection. No endowment accompanied the Collection and so the Council as trustee has been funding the entire cost of the display and management of the Collection.
- 3.3 At about the same time that the Trust was established the Council purchased the freehold premises on Birmingham Road in which the Bromsgrove Museum was sited (“the Premises”). The Premises therefore fall within the Council’s property portfolio. For some years the Premises have been occupied by the Council’s Tourist Information Centre (“TIC”), the Museum and a business tenant. A restrictive covenant applies to the land requiring the land to be used as either a museum or private residential

dwelling. However, that covenant was imposed by the Council when it disposed of the Premises in 1977 and is a covenant of the type which can be released by the Council on a subsequent disposal of the land.

### **Roles of the Council**

- 3.4 Members need to be aware whilst considering this matter that the Council fulfils two separate, distinct roles, namely as trustee and as the local authority. It is important for members to understand which role they are performing when taking decisions about the future of the Collection or the Premises.

### **The Council as Local Authority**

- 3.5 The Council as local authority is responsible for the management of the Council's resources in accordance with its priorities and objectives and in accordance with public law. The Council is committed to delivering value for money for the benefit of the local community.
- 3.6 The Council is the owner of the Premises which form an asset within the council's asset portfolio. As such the Council may retain and use those Premises or may dispose of them in accordance with its Asset Management policy.

### **The Council as Trustee**

- 3.7 The duties of the Council as trustee of the Collection are set out in the Legal Implications to this report in paragraph 5.8. The key issue is that the Council as trustee must act only to further the objects of the Trust, which may not necessarily correspond with the aims and objectives of the Council as the local authority.
- 3.8 Charity law does not require a trustee to personally fund a charitable trust; if the trust is without funds the trustee is not obliged in law or indeed expected to finance its operations.
- 3.9 Members should also note that it is the Council as a corporate entity which is the trustee, not the individual members. Individual members do not therefore generally have any personal liability or responsibility to the Trust.

### **Current Circumstances**

- 3.10 In view of declining visitor numbers and the need to deliver value for money in terms of the use of the Council's assets and resources the Premises have been closed to the public since January 2008. It was acknowledged that small museums, such as Bromsgrove's, do not attract substantial numbers of visitors, but the Bromsgrove Museum was poorly attended even by comparison. Consequently, the Council agreed as part of its medium term financial plan that it should be closed.
- 3.11 Opposition to closure has been limited and there does not appear to be a groundswell of dissatisfaction at the Council's decision. The Council has received representations from some members of the community and a

petition has been presented the names on which have been collected by the donor of the Collection.

3.12 The artifacts within the Collection are stored either at the Depot or in the Premises.

3.13 The Council as local authority has effectively withdrawn the permission which up until January this year has allowed the Trust to display the Collection at the Premises free of charge. The Trust therefore finds itself without premises or funds and the Council as trustee needs to consider whether it can continue to further the objects of the trust and if so how.

3.14 The Council needs to decide on the future of the Collection and the Premises.

### **The Way Forward**

3.15 The Council is now asked to consider the future of the Collection and the Premises. A number of options present themselves and the Council must consider these both as trustee and as the local authority. These are summarized below.

3.16 Members need to recognize that maintaining the current situation is not tenable. The Council in its capacity as trustee has an obligation to the charity to further the objects of the Trust or, if they cannot be furthered, to wind up the Trust in accordance with the law. Failure to fulfill that obligation places the Council at risk of challenge by the Charity Commission who might act in response to requests from community members, associations or other heritage organizations in the area, or from the Attorney General acting on behalf of an interested party or parties. Disposing of the artefacts in any manner other than in accordance with the legal framework also exposes the Council to possible challenge.

3.17 Officers have given careful consideration to possible options in the light of the legal framework governing charities and are able to propose a number of options.

**Option 1** – the Council transfers the Collection to a third party, or alternatively the Council resigns as trustee and a third party takes over the role of trustee;

**Option 2** – transfer to a local trust;

**Option 3** – transfer to Avoncroft Museum;

**Option 4** – join a County Museum Trust;

**Option 5** – the Council continues to act as trustee but varies the provisions of the Deed to make the requirements to manage and display the Collection more flexible; or

**Option 6** – the Council winds up the Trust

## **Option 1 – transfer to a third party**

- 3.18 A proposal has been received from a consortium of local residents (“the Consortium”) a copy of which is attached as Appendix 1. By way of summary the proposal is:
- A new charitable trust is formed (or alternatively the Consortium could simply replace the Council as trustee);
  - The Council leases the Premises to the new trust for a minimum of 20 years at a peppercorn rent with an option to purchase in the future;
  - The Council provides annual funding of a minimum of £20,000 per year for 5 years and thereafter £15,000 for 5 years
  - The Collection would be managed by one part time employee and a team of volunteers.
- 3.19 The proposal does not address the Council’s objectives nor how the proposed funding to be provided by the Council will further those objectives but does emphasise the educational potential of the proposed museum.
- 3.20 The proposal does not address the issue of storage of the “reserve collection” i.e., those artefacts not on display; it is not clear whether it is proposed that this should remain at the Council’s depot or whether other arrangements are proposed, but certainly the supporting financial statement does not provide for storage costs. It is therefore likely that the proposal also includes the provision by the Council of storage facilities at no charge to the Consortium and presumably access to the reserve collection would be required by the Consortium; no consideration has been given to possible access arrangements.
- 3.21 The closure of the museum was precipitated by declining visitor numbers which made running the museum financially unviable. The proposal does not demonstrate a marketing strategy to significantly increase visitor numbers. The business case does not demonstrate that the Consortium has the relevant experience or skills to ensure a sound future for the Collection.
- 3.22 This proposal involves the disposal of an asset at an undervalue. The Council must give careful consideration as to whether or not this is appropriate and in the interests of the local tax payer. If members are minded to grant a lease on the terms proposed consideration must be given to applying to the Secretary of State for consent as on the face of the proposal as currently drafted it does not appear to fall within the objects of the General Disposal Consent set out in paragraph 5.9 below which sets out the legal implications relating to disposal at an undervalue.
- 3.23 The proposal is not fully worked up and members need to consider whether the proposal has the potential to provide a satisfactory solution.

3.24 This proposal would require the relocation of the TIC (estimated cost £20,000) and the termination of the business tenancy.

3.25 Costs would need to be incurred in winding up the charity or revising the Deed.

3.26 Members are requested to decide whether to accept this proposal.

**Option 2 – establishment of a local trust**

3.27 The Council could initiate the establishment of a local trust to which it could explore transferring the management of the Collection. This approach already exists in various parts of the country including instances in Worcestershire and the County Museum Service has indicated that it could provide the Council with a model trust deed and provide advice and guidance on setting up a local trust for a museum. It would require a variation of the Deed which would incur legal costs.

3.28 This may also provide the opportunity to dispose of the Premises and allow for a re-branding and modernising of the museum. It may be possible to acquire or rent a property on the High Street and re-configure the museum in a more accessible and up dated format. The museum could then become a lifelong learning centre, be more hands on, have a community classroom area for adult education and school use while the potential for making a charge for admission could be explored.

3.29 Any such scheme would probably involve the following costs:  
Either:

• Make payment to Trust	£30,000
• Suitable storage of reserve Collection	unknown
• Possibly relocate TIC	£20,000
• Maintain museum building as landlord	£5,000
• Refit museum so it meet modern expectations	£50,000
• Specialist removal	£10,000

OR

• Make payment to Trust	£30,000
• Suitable storage of reserve Collection	unknown
• Relocate TIC	£20,000
• Maintain museum building as landlord	£5,000
• Rent building in High Street	£30,000
• Refit new museum premises	£50,000
• Specialist removal	£10,000

3.30 However, officers' discussions with the relevant parties has revealed that there is no current support from those parties for this option and it is not therefore a viable option for members to consider at present.

### **Option 3 – transfer to Avoncroft**

3.31 Officers have discussed this option with Avoncroft Museum. This option would also require a variation to the Deed as it currently requires the collection to be displayed within a certain radius of the town centre which would incur legal costs. This option would also involve:

- Payment for building to display collection £100,000
- Annual payment for maintenance and display of collection £25,000
- Specialist removal of the Collection £10,000
- Suitable storage of reserve Collection unknown
- Relocate TIC £20,000

In view of the significant financial implications for the Council this option is not recommended.

### **Option 4 – County Museum Trust**

3.32 The fourth option is to work more closely with three other museums in the county to form a county museum trust. The County Museum Service has engaged a consultant to explore the feasibility of a county museum trust. The museums currently displaying an interest in developing a County Museum Trust are the County Museum at Hartlebury, Worcester City Museum and Redditch Museum. This option would also require amendment of the Deed and incur legal costs in so doing.

3.33 The curator of the County Museum Service has invited the Council to include its museum for consideration although no proposals have yet been formulated. However, the Council's inclusion in these discussions does not preclude the Council from pursuing other options in the meantime.

### **Option 5 – remain as trustee retain responsibility for management and display under varied terms**

3.34 A further option is for the Council to remain as trustee and for the Deed to be varied so as to add some flexibility to the management and display of the Collection.

3.35 Currently the Deed requires the Collection to be displayed within a defined area of the town centre for not less than 195 hours per month from 1 March to 31 October each year and for a minimum of 143 hours per month from 1 November to 28 February each year. The Deed also requires the Collection to be displayed within and as part of the Bromsgrove Museum.

3.36 However, the Council as trustee may vary the terms of the Deed to relax or even remove these requirements. Legal costs would be incurred in doing so. More details are set out in the Legal Implications below.

3.37 If these requirements were relaxed it would enable the Collection to be displayed in other locations around the town or even the County. For example, displays could be located within the public areas of the Council

House, the Customer Service Centre, within schools or libraries within the district, and in the longer term, within a specially designated area of a new civic centre. Boxes of artefacts which are relevant to specific topics within the national curriculum could be prepared and loaned to schools and other organisations as and when required.

- 3.38 This option would require the completion of the task of cataloguing the entire Collection. Following completion of that exercise, some streamlining of the Collection might be required to ensure that only those artefacts which genuinely further the objects of the Trust are retained.
- 3.39 The Premises would be available for disposal by sale to realise their value and the income generated from the sale proceeds could be applied to the future storage and management of the Collection (see below). The TIC would need to be relocated and the business tenancy terminated before a sale could proceed.
- 3.40 However, members need to be aware of the financial implications attached to this option. Resources need to be applied to complete the cataloguing of the Collection, and a member of staff would be required on an ongoing basis to maintain the displays, manage the “education boxes”, ensure the reserve artefacts are adequately stored and ensure the Council’s reporting responsibilities as trustee are met. In addition, the artefacts would require specialist removal and long-term storage and specialist advice on these issues would be required. New display cases may need to be purchased. Some or all of these costs together with the cost of legal advice would most likely be incurred prior to the sale of the Premises and therefore the Council would need to make financial provision; none currently exists within the medium term financial plan.
- 3.41 This option provides the most flexible future for the Collection in that it would preserve the key parts of the Collection for the benefit of the local community, enable the Council to continue to pursue negotiations with its partners along the lines of Options 2 and 4 above, and would enable the Collection to be displayed as part of a new civic centre at some point in the future. It also enables the Premises to be sold and the value realised.
- 3.42 In its capacity as trustee the Council may consider this the least worst option for securing the objects of the charity; it will ensure that the Collection is displayed, managed and available for display and for educational purposes.
- 3.43 If members are minded to pursue this option it is recommended that an officer working group is established to manage the process of cataloguing, to take specialist advice on and undertake removal and storage of the Collection, liaison with local schools, streamlining of the Collection and disposal of surplus artefacts.

3.44 Members need to be aware that pursuing this option will commit the Council as local authority to providing support, both financial and in kind, to the Trust for the foreseeable future.

3.45 If members are minded to pursue this option the following decisions need to be taken:

Cabinet recommends to Council in its capacity as local authority that:

- a. The Museum be closed permanently; and
- b. authority is delegated to the Executive Director – Partnerships & Projects to set up a suitable advisory group to investigate the costs and implications of this option (including taking specialist legal advice, specialist advice on removal and storage of the Collection and future management of the Collection) and to report back to Council to request that appropriate funding is made available from balances to effect this option.

Cabinet recommends to Council in its capacity as trustee that:

- c. the Council delegates authority to the Head of Legal, Equalities & Democratic Services in consultation with the Executive Director – Partnerships & Projects and the portfolio holder to amend the Deed in such manner as she considers appropriate;
- d. the artefacts within the Collection are catalogued;
- e. the artefacts within the Collection are professionally moved and stored.

Cabinet is requested to resolve that:

- f. the business tenancy be terminated;
- g. the Premises be sold for the best price achievable and authority is delegated to the Corporate Property Officer to effect this;
- h. authority is delegated to the Corporate Property officer to identify a suitable location for storage of the reserve artefacts in the Collection free of charge.

#### **Option 6 – winding up of the Trust**

3.46 A final option is the complete winding-up of the Trust. The Council as trustee finds itself in the position of the Trust having no capital, no income, no premises in which to display the Collection and therefore unable to further the objects of the Trust. The Council as trustee is entitled to apply to the Charity Commission for the formal winding-up of the Trust. There is a formal process to be followed including allowing the public to make



representations to the Charity Commission on the proposed winding-up. There is no guarantee that the Charity Commission would agree to the request, but advice received by officers suggests that there is a good chance of success provided the Council as trustee is able to evidence that it has taken reasonable steps, bearing in mind the Trust's lack of income or capital, to pursue other options before winding-up.

3.47 The result of winding-up may be that the Collection is broken up and effectively lost.

3.48 The Premises would be available for disposal or re-use.

3.49 This option is not without financial implications; specialist legal advice and support would be required and officer time and resources would be required. Completion of the cataloguing of the collection would be required and the Collection would require specialist removal and suitable storage pending completion of the winding-up.

3.50 If members wish to pursue this option the following decisions need to be taken;

Cabinet recommends to Council in its capacity as local authority that:

- a. The Museum be closed permanently; and
- b. authority is delegated to the Executive Director – Partnerships & Projects to set up a suitable advisory group to investigate the costs and implications of this option (including taking specialist legal advice, specialist advice on removal and storage of the Collection) and to report back to Council to request that appropriate funding is made available from balances to effect this option

Cabinet recommends to Council in its capacity as trustee that:

- c. the Council delegates authority to the Head of Legal, Equalities & Democratic Services in consultation with the Executive Director – Partnerships & Projects and the portfolio holder to undertake the winding-up process;
- d. the artefacts within the Collection are catalogued;
- e. the artefacts within the Collection are professionally moved and stored pending completion of the winding-up.

Cabinet is requested to resolve that:

- f. the business tenancy be terminated;

- g. the Premises be sold for the best price achievable and authority is delegated to the Corporate Property Officer to effect this;
- h. authority is delegated to the Corporate Property officer to identify a suitable location for the temporary storage of the Collection free of charge pending completion of the winding-up.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 Financial implications are set out under each option. At present these figures are best estimates.

#### **5. LEGAL IMPLICATIONS**

##### **Variation of the Deed**

- 5.1 Any of the Options 1-4 set out above will require the Deed to be amended as the current conditions placed upon the Trust prohibit the transfer of the Collection to a third party and specifically state the Council as the sole trustee. In addition the conditions set out in the Deed are onerous and would be a significant deterrent to any individual or organisation approached to take on responsibility for the Collection. Similarly, for the Council to proceed with Option 5 the Deed would need to be amended to remove the onerous conditions of the Deed.
- 5.2 The Deed does not contain a power for the Council as trustee to amend the terms of the Trust. However, under the Charities Act 1993 (the "Act") there is a statutory power for trustees of unincorporated charities to amend either their powers and procedures or, in more limited circumstances, their charitable objectives. The power to amend powers and procedures is available to all unincorporated charities whereas the statutory power to amend charitable objects is only available to unincorporated charities with an income of less than £10,000. There are procedures associated with each power with more extensive requirements attached to the power to alter the objects. As the charity's income is below £10,000 both options would be available.
- 5.3 The charitable objects of the Trust – "*promoting the education of the citizens of Bromsgrove and the public generally*" – are not unduly restrictive and it is not proposed that these need to be amended to pursue any of Option 1-5. Rather it is the conditions attached to the trust that need to be amended. Standard wording in relation to powers of the trustees should also be added.
- 5.4 Whilst it is not proposed that the objects are amended, it is proposed that the procedure for amending the objects is followed. This is because it is possible that the Charity Commission ("Commission") or other interested parties may argue that the conditions listed in the Trust Deed are in fact part of the objects as the objects clause states that it is subject to the conditions. This is an argument that often arises in these situations and by following the

requirements associated with amending the objects clause the risk of another party successfully challenging the process will be reduced.

5.5 The requirements for altering the objects are:

5.5.1 the Council as trustee agrees that it is expedient in the interests of the charity for the purposes in question to be replaced;

5.5.2 the Council as trustee agrees that so far as is reasonably practicable, the new purposes consist of or include purposes that are similar in character to those that are to be replaced;

5.5.3 the passed resolution together with a statement of reasons for amending the objects must be filed with the Commission. The Commission may:

(a) direct the Council to publicise the resolution and take into account any representations made; and /or

(b) request the Council to provide further information as to why the changes were made.

5.6 Subject to these steps being completed the resolution will be effective 60 days after the date it is received by the Commission.

5.7 It is recommend that the onerous obligations are removed from the Deed on the basis that they are unduly restrictive and are a prohibitive factor in the trust furthering its objective of advancing education. The conditions should be replaced with standard clauses from the Commission's model trust deed dealing with issues such as the powers of trustees and the right to appoint new trustees. This will provide for a flexible and workable format for anyone wishing to take on the trusteeship. The spirit of the Trust – i.e. the public display of the Collection in Bromsgrove – can be left within the Trust Deed to ensure that the requirement stated at 5.5.2 is met.

#### **Role of a Trustee**

5.8 The Council as trustee is required to comply with the obligations placed on all trustees under charity and trust law. These are summarised in Charity Commission guidance for trustees as follows:

(1) Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been set up.

(2) Ensure that the charity complies with charity law, and with the requirements of the Charity Commission as regulator; in particular ensure that the charity prepares reports on what it has achieved and Annual Returns and accounts as required by law.

(3) Ensure that the charity does not breach any of the requirements or rules set out in its governing document and that it remains true to the charitable purpose and objects set out there.

(4) Comply with the requirements of other legislation and other regulators (if any) which govern the activities of the charity.

(5) Act with integrity, and avoid any personal conflicts of interest or misuse of charity funds or assets.

(6) Ensure that the charity is and will remain solvent.

(7) Use charitable funds and assets reasonably, and only in furtherance of the charity's objects.

(8) Avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk.

(9) Take special care when investing the funds of the charity, or borrowing funds for the charity to use.

(10) Use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the charity is well-run and efficient.

(11) Consider getting external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.

### **Disposal of Land at an Undervalue**

5.9 The Local Government Act 1972 section 123(2) states that a Council shall not dispose of land, otherwise than by way of a short tenancy, for less than best market value except with the consent of the Secretary of State. The consent of the Secretary of State is deemed to be given in circumstances set out in the General Disposal Consent (England) 2003 which essentially provides that a Council may dispose of land at an undervalue if the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects:

- The promotion of economic well-being
- The promotion or improvement of social well-being
- The promotion or improvement of environmental well-being

and that the undervalue does not exceed £2,000,000.

## **6. COUNCIL OBJECTIVES**

- 6.1 The museum does not feature in the Council's priorities and the level of attendance at the museum reflected low levels of resident interest and commitment to the museum.

## **7. RISK MANAGEMENT**

- 7.1 The main risks associated in this report are:

- Legal action  
It is possible that the charity commission could take action against the Council for breach of the Deed.
  
- Affect reputation  
It is possible that the Council's reputation may be adversely affected by the closure of the museum. Although the number of visitors has been extremely limited the closure of an institution or organisation can sometimes be met with disproportionate opposition.
  
- Deprive community of its historical records  
The museum does contain some valuable and important artefacts associated with Bromsgrove's history.

- 7.2 These risks are being managed as follows:

- Legal action  
This risk would be reduced very significantly once the Council resolves to and then actively pursues one of the options contained in this report; any risk of action arises from the current situation whereby the trustees are not positively acting in the interests of the Trust.
  
- Affect reputation  
To mitigate this it may be necessary to demonstrate that action to address the current situation is being taken and have a clear communications plan as to inform the public as to why the decision has had to be taken.
  
- Deprive community of its historical records  
It is possible to make the case that the approach taken to the management of the museum has meant that the most has not been made of the collection and the current trust deed imposes unreasonable constraints on the development of the museum. In adopting a more proactive approach and through varying the trust deed it could be that the items in the museum could be used to better affect and promote understanding regarding the history of Bromsgrove.

These risks will be added to the Street Scene and Community Services risk register.

- 7.3 Currently the risks identified above in 7.1 is not addressed by any risk register and will be added to the Street Scene and Community Services risk register.

**8. CUSTOMER IMPLICATIONS**

- 8.1 The closure of the museum will have a negative impact on the customers who could potentially have visited it however this is felt to be negligible given the low visitor numbers.

**9. EQUALITIES AND DIVERSITY IMPLICATIONS**

- 9.1 The museum is currently inaccessible to those with mobility difficulties and those who use a wheel chair.

**10. VALUE FOR MONEY IMPLICATIONS**

- 10.1 By continuing to operate the museum as it was previously the Council would not be demonstrating value for money – visitor numbers were low and as a result the cost per visitor were high. The Museum does not directly contribute towards the achievement of the Council’s objectives and priorities and as such doesn’t represent value for money. Given this it is felt that Options 5 or 6 operate the best value for money to the Council.

**11. OTHER IMPLICATIONS**

Procurement Issues	None
Personnel Implications	None
Governance/Performance Management	None
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Environmental	None

**12. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	Yes
Chief Executive	Yes

Executive Director - Partnerships and Projects	<b>Yes</b>
Executive Director - Services	<b>No</b>
Assistant Chief Executive	<b>No</b>
Head of Service	<b>Yes</b>
Head of Financial Services	<b>Yes</b>
Head of Legal, Equalities & Democratic Services	<b>Yes</b>
Head of Organisational Development & HR	<b>No</b>
Corporate Procurement Team	<b>No</b>

**13. WARDS AFFECTED**

All wards

**14. APPENDICES**

Appendix 1 Proposal from the Consortium

**15. BACKGROUND PAPERS**

None

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