

BROMSGROVE DISTRICT COUNCIL

CABINET

1 APRIL 2009

BROMSGROVE MUSEUM

Responsible Portfolio Holder	Councillor Roger Hollingworth
Responsible Head of Service	Phil Street

1. SUMMARY

- 1.1 This report details the progress made by the museum advisory group on actions to address the future of Bromsgrove Museum.

2. RECOMMENDATION

- 2.1 That Cabinet notes that the museum advisory group has been established and that it has investigated the arrangements and costs associated with the future of Bromsgrove Museum.
- 2.2 That it is recommended to Council that the Friends are requested to produce a development plan for consideration by the Council as trustee within 3 months.
- 2.2 That Cabinet reconsiders its decision made on 1 October 2008 that the land and building which houses the Collection should be sold or utilised for the best price achievable.
- 2.3 That Cabinet considers whether to offer to the Friends a long, full-repairing lease at a commercial rent to be completed within 6 months; and/or
- 2.4 That Cabinet considers whether to offer the Friends a 5 year full-repairing lease to be completed within 6 months at a peppercorn rent with an option to purchase at its expiry at full market value;
- 2.5 That if Cabinet is minded to proceed with a sale to the Friends on the terms proposed by the Friends:
- 2.5.1 authority is delegated to the Corporate Property Officer to negotiate terms for an option in consultation with the Portfolio Holder, subject to any conditions Cabinet considers to be appropriate;
- 2.5.2 that Cabinet recommends to Council that the Friends are given 12 months to April 2010 to generate the funds required to purchase and operate the museum and that progress towards

this is reviewed by Council after 6 months in September 2009, and that during this period consideration of Option 5 (as detailed in the report to Cabinet on 1 October 2008) continues

3. BACKGROUND

- 3.1 At the Council meeting on 12th November 2008 it was resolved that that the Museum be closed permanently, but and that the Executive Director (Partnerships and Projects) set up an advisory group to report to Council in January 2009 on the viability of a proposal received from a new charitable trust known as the Friends of the Norton Collection Charitable Trust (“the Friends that:
- The Council allows the Friends an opportunity to purchase the building which housed the museum at market value under an option to purchase to allow the Friends 9 months in which to raise the relevant capital (a decision for the Cabinet);
 - The Council transfers the Norton Collection to the Friends (a decision for the Council in its capacity as trustee);
 - The Council provide short-term storage facilities for the residual Collection free of charge (a decision for the Cabinet).
- 3.2 It was further agreed by Council at its meeting on 12th November 2008 that information on the costs and implications of Option 5 contained in the report to Cabinet on the Future of Bromsgrove Museum in October 2008 be presented and reported back to Council to request the release of appropriate funding from balances to effect Option 5. Members will recall that Option 5 involved the Council remaining as trustee for the Norton Collection and for the Deed to be varied so as to enable parts of the Collection to be displayed within public areas of the Council House, Customer Service Centre and for “education boxes” to be made available to local schools to support the curriculum. The museum would vacate the premises which could then be sold.
- 3.3 At its meeting on 1st October 2008 the Cabinet agreed that the land and building which houses the Collection should be sold or utilised for the best price achievable.
- 3.4 The advisory group has been established and it included representation from the County Council Museum and Archives Service. The group was unable to report back to Council in January 2009 as a number of the tasks required additional time to complete. However, the tasks it was asked to undertake have now been completed. This has included:
- a valuation of the museum building;
 - obtaining quotes from specialist removal companies for removing and storing the artefacts;
 - investigating the degree to which the collection has been catalogued; and
 - considering the issues relating to proceeding with Option 5.

Option 5

- 3.5 Advice has been received from the County Council Museums and Archives Service officers sitting on the advisory group on the proposed operation of Option 5. This suggests that the system for operating such a scheme would be more time consuming, complicated and expensive than previously believed.
- 3.6 Pursuing Option 5 will entail removal of the artefacts currently housed at the museum building and the engagement of a specialist removal company. The indications are that the removal of artefacts from the museum would involve 4 staff working for a minimum of 2 weeks. The cost of removal is estimated to be approximately £20,000 and this does not include removing any fixtures which would add about a further £10,000 to the cost.
- 3.7 The removal company could offer temporary storage facilities although it is anticipated that the artefacts could be stored at the Council's Depot in the short term. However, the advice received from the Museum and Archives Service is that in the long term the Collection should be professionally stored in acid-free storage boxes with appropriate environmental control equipment. This has not been costed but would be significant.
- 3.8 It has also been suggested that some conservation and repair work should also be undertaken to some items in the Collection but again this has not been costed.
- 3.9 Officer time and resources would be required to select those items from the Collection for inclusion in the various curriculum boxes, in promoting the boxes, issuing the boxes and checking their return. The Council would need to identify a resource to undertake this work and it is unlikely that there is capacity to do this within existing teams.
- 3.10 In summary, the professional advice from the members of the advisory group has revealed that the proposal for furtherance of the trust through Option 5 is more involved and costly than originally anticipated and that in order to pursue this option to be furthered the Council must commit the resources identified as being appropriate which would in due course require a recommendation to Council to revise the Medium Term Financial Plan.

Valuation of the Building

- 3.11 Members are advised that although previous valuations of the building have been undertaken that these have not taken account of the fact that the building is subject to a number of restrictive covenants. The covenants restrict the way in which the land can be used and have a negative effect on the ultimate value that can be realised as a result. These covenants have been attached to the land at various stages in time by various parties, including the Council and the extent to which they can be varied has not yet been investigated. It is fair to say that this

exercise would need to be undertaken before the Council moved to disposal if it were determined to achieve the highest valuation. It is also fair to say that in the current economic climate the optimum value is unlikely to be achieved.

- 3.12 The current valuation of the building with the restrictive covenants that are currently attached to the land, the current planning use and on the basis of vacant possession is £290,000.
- 3.13 A tenant occupies one of the workshops at the rear of the building and has been given notice to vacate the premises by the end of June. No steps can be taken to dispose of the premises until vacant possession has been obtained.

The Option to Purchase

- 3.14 The Friends have requested that the Council enters into an option agreement whereby it agrees that for a period of 9 months (although informally the Friends have indicated that they would prefer this to be extended to 12 months) the Council will not dispose of the land to any other party, and that the Friends are given the option to acquire the land for a set price.
- 3.15 The Friends have indicated that without this option they are unable to demonstrate the certainty required by potential funders of the future of their investment.
- 3.16 Members may consider that in light of the current slump in property prices and the need to secure Value for Money, this may not be the most appropriate time to consider sale of the building and Cabinet may wish to explore other options.
- 3.17 The Section 151 Officer has advised that assets management policy is currently based on assumptions that the property market will revive within the next 5 years. On that basis members are advised that the proposal from the Friends may not constitute Value for Money. Members may wish to reconsider the decision made on 1 October 2008 to dispose of the building for the best possible consideration. Members are requested to consider 2 alternatives to the proposal made:
- a. offering the Friends a long lease at a commercial rent;
 - b. offering the Friends a lease for 5 years at a peppercorn rent with an option to purchase the land at the expiry of the lease for the then market value.
- 3.18 In either case, any offer of a lease should be on the basis of it being a full repairing lease. The Friends have indicated that they intend to carry out alterations to the building (albeit on the assumption that the land would be sold to them) and if a lease were granted to the Friends but subsequently ended and possession returned to the Council, members

need to be aware this might result a claim from the Friends for compensation for improvements.

- 3.19 If members are minded to proceed with the short lease at a peppercorn rent with an option to purchase upon its expiry, there is a risk that in 5 years' time market values may not have risen and the Council would be bound to sell at that time and on those terms.
- 3.20 These options would enable the Friends to press on with their plans without the need to raise a significant capital sum at the outset and would allow them more time to raise capital should they wish to purchase the freehold at some point in the future.
- 3.21 Neither of these options has yet been put to the Friends and Cabinet is requested to decide whether to open up negotiations with the Friends on either or both of these bases. It is suggested that a longstop date 6 months hence is agreed for finalising the terms of the lease.
- 3.22 If the Cabinet is minded to proceed with a sale to the Friends in accordance with its decision made on 1 October 2008, Cabinet needs to consider the terms of the option requested. The Friends have requested that in the event they decide to exercise the option, the purchase price for the land and building be index linked to reflect any fall (but not any rise) in property values. It is recommended that this should operate both ways, and that any option should be expressly index linked to reflect in the eventual purchase price not only any fall in property values but also any rise in property values. It is normal for the party receiving the benefit of an option agreement to pay a sum of money to the other party on the signing of the option agreement. The Friends have requested that this sum should be minimal. Members are requested to consider this issue and to delegate authority to the Corporate Property Officer to negotiate terms for an option in consultation with the Portfolio Holder, subject to any conditions Cabinet considers to be appropriate.

Transfer to the Friends

- 3.23 The advisory group has also explored the feasibility of transferring the artefacts to the Friends.
- 3.24 The advisory group has assessed the capacity of the Friends to operate a museum housing the Collection. The Council as trustee must satisfy itself that the Friends are capable of furthering the objects of the Trust and preserving the Collection indefinitely for the benefit of the local community.
- 3.25 The Friends are led by a person with well established museum credentials. Although retired he acts as an advisor and consultant to a number of museum and heritage projects. Before taking early retirement he was Head of Development Office for the National Museums and Galleries on Merseyside (now National Museums Liverpool) and was responsible for securing funding for a wide range of projects from small

displays or education initiatives to major new museums developments. This includes the Kidderminster Carpet Museum. He has worked for the European Commission reviewing project applications and acting as project advisor in the heritage and ICT fields. He has also given workshops about funding opportunities and making applications.

- 3.26 The advisory group sought information on the Friends' proposed trustees and its membership base. The information supplied indicated that the trustees reflected a group with proven experience, integrity and professional breadth. Outline details were provided of the membership of the Friends and this appears also to be wide ranging and contains people with a cross section of experience and professional backgrounds.
- 3.27 The advisory group has requested that the Friends produce a development plan for the museum which includes its fundraising strategy. Members will not be in a position to determine whether the proposal by the Friends is a viable one until the advisory group has been able to adequately explore the extent to which the development plan demonstrates a sound and viable and sustainable plan for the operation of the trust. It is recommended that the Friends are requested to produce a development plan for consideration by the Council as trustee within 3 months.
- 3.28 Whilst the development plan has not yet been produced an initial indication in relation to the fundraising aspects is attached to this report as Appendix 1. This is of course based on the assumption that the Friends would purchase the building at the outset and not on the alternative lease suggestions referred to above. If members are minded to proceed with the proposal put forward by the Friends, the fund raising plan would appear to be a realistic and well-formulated plan that indicates the group would require 12 months to generate their target capital and the Friends have confirmed that they would be in a position to indicate whether the fundraising was on target after 6 months.
- 3.29 The advisory group suggested that the Council may wish to keep some future involvement in the event that the Collection is transferred to the Friends, perhaps by requesting an ability to appoint one of the trustees, in order to maintain a link to the Collection. This has not been suggested by the Friends and has not been included as one of the recommendations but members should be aware of the suggestion.
- 3.30 In the event that members were not minded to pursue a sale of the building or an option to purchase at this time then in order for the Friends to complete the development plan members would need to determine on what basis that the building could be utilised by the Friends.

Cataloguing of the Collection

- 3.31 The advisory group has ascertained that virtually all of the items in the Collection have been catalogued or entered into an inventory.

Winding Up

- 3.32 If the transfer to the Friends does not proceed and members were minded not to proceed with with Option 5 the only remaining currently viable option would be to consider the winding-up of the current charity. To do so would require the consent of the Charity Commissioners, and in order to obtain that consent the Council would need to demonstrate that it had taken all reasonable steps to secure the future of the Collection including transfer to any suitable alternative charitable organizations. In other words, it would need to be satisfied that winding-up was a last resort and that all other appropriate options had been explored and exhausted.

4. FINANCIAL IMPLICATIONS

- 4.1 The costs associated with closure of the museum include revaluation of the building which it anticipates will cost some £350.
- 4.2 The building is valued by the Council at some £290,000.
- 4.3 The cost of removal of artefacts is quoted at approximately £20,000. The removal of fixtures is expected to add up £10,000 on that cost. The temporary storage of artefacts with the removals company would be some £250 per month; the cost of long-term storage in proper conditions has not been ascertained.
- 4.4 The operation of a peripatetic curriculum boxes will require their establishment and overseeing of their issuing and return. It is anticipated that will involve a recurring cost of £10,000 per year.
- 4.5 Additional cost of legal action required to amend the Deed of Trust (in the event of proceeding with Option 5 or winding-up) has not yet been calculated.

5. LEGAL IMPLICATIONS

Variation of the Deed to enable Option 5

- 5.1 Permanent closure of the museum or transfer to another trust 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.
- 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..

- 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 closure or transfer. 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 recommended 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 wellrun 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:

- Action by the Charity Commission

It is possible that the Charity Commission could take action against the Council by intervening in circumstances when it considers there to be some grave, serious risk to the charity's interests in order to protect the charity and its assets. in the event of it receiving a complaint about the Council in its capacity as trustee .

- 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:

- Action by the Charity Commission

Specialist legal advice is being sought in this respect. 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 The closure of the museum will save the Council £70,000 in a full year and the sale of the building is likely to realise a sum of £330,000.. However, there will be a payment of over £25,000 to carry out the actions associated with museum closure.

10.2 This may be greater if the Council faces legal costs should the Council be challenged over closure.

10.3 If members agree to transfer the the 'Friends of' organisation the savings will be realised, but it will not incur costs associated with closure and storage.

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)	Yes

Executive Director (Services)	Yes
Assistant Chief Executive	Yes
Head of Service	Yes
Head of Financial Services	Yes
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	Yes
Corporate Procurement Team	No

13. WARDS AFFECTED

All Wards, but St John's Ward due to the location of the museum building

14. APPENDICES

Appendix1 – Contains the section of the development plan addressing fund raising.

15. BACKGROUND PAPERS

Not applicable

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Appendix One

THE FRIENDS OF THE NORTON COLLECTION CHARITABLE TRUST

Organisation of Fundraising Campaign

Elements of Campaign

The Trust has agreed an approach whereby one fundraising campaign will be mounted that includes several different elements. The elements will include purchase of the building, provision of access for disabled visitors, conversion of two of the rear workshops into an education suite, a café facility and some enhancement to the display interpretation.

The purchase of the building will be the substantial element; the other elements are not likely to add significantly to the fundraising total although the cost of the access for disabled visitors is currently being investigated. By including these elements the campaign will reflect a more rounded project with a strong emphasis on education that is more likely to attract funding and provide the Trust with the resources to manage and open to the public an appropriately functioning museum.

When the secured funding reaches the purchase price for the building then the Trust would want to commence the legal side of the purchase of the building with Bromsgrove District Council. Meanwhile the campaign would continue and as further funding is secured then the other elements will be completed until the overall campaign total is achieved and all the elements are completed.

The Trust feels this is a more effective way of fundraising than mounting a series of campaigns for the individual elements.

Potential Funders

The Trust will be approaching a wide range of different funders. These are likely to include the Heritage Lottery Fund (HLF), trusts and foundations (both national and regional) Landfill Tax, community funding agencies, local businesses and the public. In the main, the campaign will involve making grant application and in the light of the current financial situation these applications will have to be well crafted and focused on appropriate funding bodies. Local businesses at this stage are going to find it difficult to support the project but as the museum develops there may be opportunities in the future. At a later stage in the campaign when perhaps there is a modest gap between what has been raised and the campaign target, a public appeal will be mounted to directly involve the local community.

Fundraising at any time is a challenge and in the current financial situation it will be particularly challenging but the Trust is determined to do everything it can to raise the funding to secure the future of the museum in Bromsgrove for the local community and for visitors to the town.

Lead Trustees

The fundraising campaign will be led by three of the Trustees – Peter Reed, Jenny Edginton and Dennis Norton.

Peter Reed although retired acts as an advisor and consultant to a number of museum and heritage projects. Before taking early retirement he was Head of Development Office for the National Museums and Galleries on Merseyside (now National Museums Liverpool) and was responsible for securing funding for a wide range of projects from small displays or education initiatives to major new museums developments. He has worked for the European Commission reviewing project applications and acting as project advisor in the heritage and ICT fields. He has also given workshops about funding opportunities and making applications.

Jenny Edginton has wide experience in the education field (including a schools museum service), both securing funding for projects and also acting as an advisor on funding applications. She is an advisor to the Royal Society of London for their grant awards and has secured funding and awards from Partnership Grants and Quality Mark. She has also secured funding for the Broadway Tower project.

Dennis Norton has long experience of successfully securing both funding and support-in-kind for a wide range of projects in Bromsgrove. He was instrumental in building up the Norton Collection and also in creating the displays that currently comprise Bromsgrove Museum. He has very good local connections that will be important for the overall campaign.

Timescale

The Trust is very keen to secure an accommodation with Bromsgrove District Council over the purchase of the existing museum building and the transfer of the Norton Collection. A period of 12 months for securing the necessary funding would provide the Trust with a reasonable period. The Trust would keep the District Council informed on progress and would agree to a milestone after 9 months with an open and transparent review of the likely success of the campaign.