

BROMSGROVE DISTRICT COUNCIL

CABINET

7th October 2009

Transfer of Bromsgrove Museum

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

1. SUMMARY

- 1.1 The report explores actions required to either continue with the process of transferring the museum or addressing the actions required for its complete closure.

2. RECOMMENDATIONS

It is recommended that the Cabinet resolves to dispose of the land at Birmingham Road, Bromsgrove on which the Bromsgrove Museum is located, to the Friends of the Norton Collection (“the Friends”) subject to the following:

- 2.1 that any disposal of the land (whether by sale, lease or otherwise) to the Friends is conditional upon the Friends becoming a registered charity with a registered charity number and that the disposal is made to the registered charity;
- 2.2 that the consideration for a sale of the land to the Friends should be for current market value;
- 2.3 that authority be delegated to the Head of Legal, Equalities and Democratic Services in consultation with the Portfolio Holder and the Executive Director of Partnerships and Projects to agree the terms of such disposal (whether by sale, lease or otherwise) to the Friends to include appropriate provision for the following:
- 2.3.1 in the event of a dissolution of the Friends or in the event of the Friends subsequently proposing to sell, lease or otherwise dispose or transfer all or part of the land or all or part of its interest in the land:
- 2.3.1.1 an option to purchase the land; or
- 2.3.1.2 a right of pre-emption to give the Council the first right of refusal to acquire the land; or

- 2.3.1.3 as an alternative to either 2.3.1.1 or 2.3.1.2 the right to clawback any increase in value subject to the value of any improvements undertaken by the Friends;
- 2.3.2 a formula for calculating the sum at which the Council would be entitled to re-acquire the land when exercising its option or right of pre-emption, such sum to reflect the lower of either:
- market value as at the date of re-acquisition; or
 - a sum which should not exceed the consideration for the sale to the Friends plus 1% simple interest per annum, plus the value of any improvements undertaken by the Friends;
- 2.3.3 appropriate covenants as to the future use of the land supported by a clawback provision in the event of a subsequent change of use to which the Council has not consented;
- 2.3.4 appropriate covenants as to the maintenance of the building;
- 2.3.5 a restriction against dealings in the land without the consent of the Council;
- 2.4 that any disposal of the land to the Friends is conditional upon the heads of agreement being agreed by both parties by the end of October 2009; if the negotiations are not concluded by this date authority be delegated to officers to explore alternative proposals for disposal of the land and the Collection; and
- 2.5 that contracts for the disposal of the land to the Friends be exchanged by 31 October 2010.

It is recommended that the Cabinet makes the following recommendation to Council in its capacity as trustee of the Norton Collection:

- 2.6 that any transfer of the Collection to the Friends is conditional upon the Friends becoming a registered charity with a registered charity number and that the Collection is transferred to the registered charity.

3. BACKGROUND

- 3.1 Bromsgrove District Council resolved to close the museum in 2007 and it has been closed to the public since January 2008. The Council has been tackling the complex process of disposing of the items within the museum. There are two potential avenues to disposal. The first is to make the items available to another collection. The second is to transfer the collection in its entirety to a local trust established for the purpose of operating the museum. An officer working group (which includes officers from other organisations with substantial experience

of museums) has been established to consider the future of the Museum and this has met regularly.

- 3.2 In December 2008 the Council, as trustees of the museum, resolved to close the museum and dispose of its items, but asked officers to explore the feasibility of a newly created trust to operate the museum. Discussions were held with representatives of the 'Friends of the Norton Collection'. The "Friends" had proposed that the Council grant the Friends a one year option to purchase the building in which the Museum is housed at current market value and then transfer the Collection to the Friends with a review of progress be held nine months into the fund raising period and if they have not received a guarantee of 60% of the cost of purchasing the museum supported by letters of commitment by donors, the museum items will be prepared for disposal.
- 3.3 Cabinet considered the Friends proposal on 1st April 2009 but considered that in view of the current property market this would not result in the Council obtaining value for money from the sale of this asset. Therefore Cabinet rejected the proposal but instead proposed that the Friends be offered a 5 year full repairing lease to be completed within 6 months at a peppercorn rent at the expiry of which the Friends be offered either an option to purchase at the full market value or a further full repairing lease at a commercial rent. Cabinet recommended to Council that the Council consider a development Plan prepared by the Friends. The Cabinet had proposed the five year peppercorn rent as a generous gesture as it gave the 'Friends' longer to generate the required sum and met the Council's requirement to demonstrate best value, namely delaying the sale of the building until the market had recovered. Furthermore, it met the Council's criteria for obtaining best value. The five years would allow the Friends to operate a 'fighting fund' arrangement where they raised money through public donations to buy the building.
- 3.4 At full Council on 29th April Council approved the Friends as an organisation to which the Council would transfer the Collection subject to officers being tasked to undertake further work with regard to the sustainability of the Trust and its proposals and that the Council be provided with access to the Collection following its transfer to ensure it was being adequately looked after.
- 3.5 On 5th May the museum working group met with the Friends and the resolutions of Cabinet and Council were discussed. The 'Friends' indicated that they that they could not support the proposals put forward by Cabinet regarding the offer of a peppercorn rent. The 'Friends' did not consider this proposal as acceptable on the basis that they perceived that it would be difficult or impossible to raise the capital required to purchase the building if the sum required to purchase it had not been specified at the outset and asked if Cabinet would reconsider their decision; in particular, the Friends have requested that an agreed

value be placed on the building and the Friends be granted an option to purchase it for that sum within a year. The 'Friends' contended that the covenants on the building would mean that the price of the building would be less affected by a property upturn owing to the fact that the property could only be used as a museum or a private dwelling. The point was made that given the housing moratorium the building could not be sold as a private dwelling. In summary, the Friends insisted that a one year period to raise the money was the basis on which they would like to progress.

- 3.6 Following discussions with the 'Friends' further advice has been taken from museum professionals and the guidance received is that the Council would be well advised to consider negotiating with the 'Friends' on the basis of sale within a year or dispose of the collection in keeping with Charity Commission and Museum and Library Association guidance.
- 3.7 The Council has to consider disposal of the Collection as a serious option either at this point or in the future. A representative of the Worcestershire County Council museums service suggests the Collections comprises some 15 – 17,000 items. However, if this option has to be pursued the appropriate procedure would be for the entire Collection to be made available through posting its availability in the museum trade press and inviting interest from another museum or collection. It has been suggested that although the Norton Collection does have some valuable pieces, the majority of the collection was only of local significance. The procedure would suggest that if after three months no offers were received for the collection the Council, as trustees, could sell the items.
- 3.8 The risks involved in pursuit of this approach revolve around cost, time and reputation.
- 3.9 The reputational issue maybe challenging as a considerable number of the items have been donated since the collection came into the control of the Council. Items, a number of which are of considerable value – financial and / or sentimental – will have been donated with the intention of being for the benefit of the people of Bromsgrove. The donors or their relatives may see the disposal of their donations for money as unacceptable and disrespectful of their wishes. Returning items may be difficult because of the terms on which they were donated and time consuming in terms of investigating whether those making a claim for the item had a genuine entitlement; returning items will amount to disposal of charitable assets and must be undertaken in accordance with charity law.
- 3.10 The current valuation of the building is £285,000. The 'Friends' are interested in purchasing the building for that sum. The Council wants to wait for improvements in the property market and could see a 10% annual rise in property prices over five years taking the value to around

£400,000. During the five year period the Council will pay £13,000 a year non domestic rates plus any costs associated with maintaining the building.

- 3.11 If the Collection is to be disposed of it is estimated that the work of listing, pricing and photographing would approach 140 days to complete the work based on 80 items a day. At £200 per day this would cost £28,000. This does not include the cost of materials and cameras. Furthermore after all this work there is not a guarantee that the items will sell.
- 3.12 The combination of non-business rates, work on preparing the items for sale, the reputational damage and the other associated costs leads to the proposal that a sale price should be agreed and that the 'Friends' are given 12 months to raise the money with a review after 9 months. In the meantime the museum remains closed and the building mothballed. In view of the advice received since the Cabinet made its decision on 1 April 2009, Cabinet is asked to reconsider this issue. It is proposed that the Friends should effectively be given 12 months within which to raise the necessary finance and exchange contracts.
- 3.13 It is essential that the building should be sold into trust and that if the Friends are unable to raise the money notice be given that the items are to be sold and discussions held to dispose of the collection and a pressure be included in the budget for 2010 – 11 to support the disposal of the collection.

4. FINANCIAL IMPLICATIONS

- 4.1 The cost of staff undertaking the itemising of the collection could be considerable as they will have to list, photograph and price between 15 – 17,000 items. The time required to do this work will also be extensive. The Council would have to consider whether it had the capacity to do this work, if it did not agency staff would need to be engaged. The collection would have to be advertised in the trade press and if the Council did not receive offers for the collection it would have to enter into a contract with an auctioneer to dispose of the items.
- 4.2 The current valuation of the building is £285,000. The 'Friends' are interested in purchasing the building for that sum. The Council wants to wait for improvements in the property market and could see a 10% annual rise in property prices over five years taking the value to around £400,000. During the five year period the Council will pay £13,000 a year non domestic rates plus any costs associated with maintaining the building.
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- 4.4 The combination of non-business rates, work on preparing the items for sale, the reputational damage and the other associated costs leads to the proposal that a sale price should be agreed and that the 'Friends' are given 12 months to raise the money with a review after 9 months. In the meantime the museum remains closed and the building mothballed.
- 4.5 There is a real risk that if negotiations were terminated with the 'Friends' the Council may face legal action which would involve the Council incurring legal costs to defend the Council's position.

5. LEGAL IMPLICATIONS

- 5.1 It is a legal requirement that any transfer of the Collection is made to a charity or charitable trust with objects which are substantially similar to those of the Norton Collection. The Friends are not currently a registered charity as a trust with charitable objects is only required to register as a charity if it has an income of £5,000 per annum, and the Charity Commission is not currently accepting voluntary registrations from organisations with a lesser annual income. However, it is reasonable for the Council to require a receiving organisation to be a registered charity. Firstly, a registered charity is more accountable than a non-registered charity in terms of being listed on the public register with the Commission and, subject to differing thresholds, having to account to the Commission for its activities on an annual basis
- 5.2 The Council might wish to consider imposing a condition in relation to the sale of the building providing that the 'Friends' should grant to the Council a right of pre-emption which would effectively give the Council the first right of refusal to acquire the land in the event of a dissolution of the trust or if the land becomes available for sale or transfer, or as an alternative that the Council has the right to claw back any increase in value. The right of pre-emption would need to clearly specify exactly what events would trigger the right of pre-emption.
- 5.3 Alternatively the Council might consider, on any sale to the Friends, requiring an option to purchase which contractually precludes the Friends from selling the property to another party so long as the option remains exercisable, but such an option must be exercised within 21 years (and so a right of pre-emption might be the better long-term option), or as an alternative that the Council has the right to claw back any increase in value.
- 5.4 A right of pre-emption or an option can be registered against the title to the land at the Land Registry.

- 5.5 There may be tax implications associated with a right of pre-emption or option which would need to be investigated.
- 5.6 The Council might wish to consider imposing restrictive covenants relating to future use of the land. These could be supported by a clawback provision in the event of a subsequent change of use to which the Council has not consented.
- 5.7 The Council might wish to impose a clause into the sale documentation prohibiting any dealings by the Friends with all or part of the land or any interest in all or part of the land without the consent of the Council and that such clause be registered against the title to the land at the Land Registry. This would ensure that the Council was aware of any proposed dealings, that any dealings would not adversely affect any residual rights the Council might have in the land and ensure that any option or right of pre-emption the Council had was protected.

6. COUNCIL OBJECTIVES

- 6.1 The museum does not form part of the Council's priorities.

7. RISK MANAGEMENT

- 7.1 Trust Unable to Raise Funds – If the trust is unable to raise the funds the collection will be advertised for sale as a single entity and if the sale cannot be secured it will be catalogued for auction. The process of fund raising would be monitored through the museum working group and nine months after the agreement to move to sale had passed the trust would be expected to produce documentation demonstrating it had secured or looked likely to secure the target sum of £285,000.
- 7.2 Trust does not obtain charitable status in line with Council expectations – If the trust is insufficiently robust and does not produce a development plan, management plan and marketing plan that the Council regards as satisfactory, the Council will have to withdraw from the negotiations. The Council will offer guidance to the trust on the criteria and standard of plans it requires and the nature of the charitable organisation it wants to see established to allow it to feel secure in the transfer.
- 7.3 Trust does not accept pre-emption conditions on sale of property – The Council would seek legal advice on the pre-emption arrangements and if these were not accepted by the Trust the negotiations would be re-considered if not concluded.
- 7.4 Cost of disposal has to be met – An estimate of the costs associated with disposal have been produced and a pressure would be indicated for the medium term financial plan.
- 7.5 Reputation damaged by sale of items – The Council would need to produce an explanation as to the reasons for the sale of the items and how the sales income would be applied. Those who simple lent items to the museum would have the items returned.

- 7.6 Cannot dispose of collection as a single transaction – The Council will advertise the collection in the museum and archives trade press for sale as a single collection. In the event of offers not being received the collection would be prepared for auction and the income use dfor good works in Bromsgrove.
- 7.7 Legal action taken against Council as trustees of museum – The council will seek legal and charity commission advice on the course of action it was pursuing in relation to disposal of the collection.
- 7.8 Trust is not sustainable or faces operational difficulties after purchase of building – The pre-emption clause in the contract would be invoked and the Council would proceed with sale of the artefacts.

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.

10.2 The challenge in relation to value for money is the need to secure a best value return on the sale of the building while balancing this against the costs incurred from the maintenance of the building and the payment of non-domestic rates on an empty building.

10.3 A further value for money consideration is the costs incurred in disposing of the items compared with transfer of the items to a trust. It is suggested that if negotiation can be successfully concluded with the trust based on an agreed market value for the building and transfer of items then and If an agreed market value can be achieved and transfer secured to a trust this would release resources to the Council and remove any revenue implications.

11. OTHER IMPLICATIONS

Procurement Issues – Advice on actions to dispose of the items
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)	No
Assistant Chief Executive	No
Head of Service	Yes
Head of Financial Services	Yes
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

13. WARDS AFFECTED

All Wards, but St John's more directly

14. APPENDICES

Not applicable

15. BACKGROUND PAPERS

None

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