

## BROMSGROVE DISTRICT COUNCIL

# CABINET

3rd November 2010

### BROMSGROVE MUSEUM

Relevant Portfolio Holder	Councillor M. J. A. Webb
Relevant Head of Service	J. Godwin
Non-Key Decision	

#### **1. SUMMARY OF PROPOSALS**

- 1.1 This report follows on from a report submitted to Cabinet in October 2009 and asks for members of the Cabinet to consider a change to the previously agreed terms and conditions of a proposed transfer of the Bromsgrove Museum.

#### **2. RECOMMENDATIONS**

- 2.1 **Cabinet is asked to consider and determine whether or not to continue with the disposal of the museum as previously agreed at its meeting on 7<sup>th</sup> October 2009 with the revision that the previously agreed claw back be replaced with a requirement that a restrictive covenant be placed on the title of the land and buildings disposed of to the effect that the land and buildings can only be used for the purposes of a museum.**

#### **3. BACKGROUND**

- 3.1 Members will recall that at the meeting of the Cabinet on 7<sup>th</sup> October 2009 members considered and agreed the terms and conditions that would be attached to any sale of the museum building to the Friends of the museum (the Friends).
- 3.2 Members are advised that the Friends have sought funding for the purchase of the museum on these terms and have advised the Council that potential funders are not able to commit to the project because of the existence of the claw back.
- 3.3 At their meeting on 7<sup>th</sup> October 2009 Cabinet members acknowledged the value of the museum and their desire to maintain the provision thereof to the community of Bromsgrove.
- 3.4 Members are being asked to consider the request by the Friends for the Council to dispose of the building at the previously agreed price of £285,000 subject to a restriction on its use and to remove the requirement for a claw back clause to enable them to achieve the levels of funding required to purchase the building.

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#### **4. KEY ISSUES**

- 4.1 The Cabinet has previously agreed to the sale of the building and the sale of the building is in line with the Council's priority to develop and regenerate the Town Centre.
- 4.2 The Cabinet has determined through the business plan provided by the Friends of the Museum that the proposed project would benefit the Town Centre and enable the Council to further the objects of the Museum Trust.
- 4.3 The original claw back was intended to be imposed on a reducing basis and would therefore have been on benefit to the Council over a time limited period.
- 4.4 The Council must also consider the status of the Norton Collection. As previously reported to members, a representative of the Worcestershire County Council museums service has suggested that the collection may comprise of something in the region of 15 – 17,000 items.
- 4.5 It is essential that the Council consider the costs associated with continuing to store, maintain and catalogue these items and the risks, which have previously been reported to members of disposing of the collection in relation to cost, time and reputation.
- 4.6 Indeed in every respect 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.
- 4.7 The current valuation of the building is £285,000. The 'Friends' are interested in purchasing the building for that sum.

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- 4.8 In the current economic climate it is not likely that the market will improve in the foreseeable future and the Council must consider the £13,000 a year non domestic rates plus any costs associated with maintaining the building that it is currently expending and will continue to expend until the museum building is sold.
- 4.9 Members must also consider that the building itself is not currently delivering any of the Council's priorities or achieving its worth within the context of the assets management plan.
- 4.10 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. There are also costs associated with the continued housing of the dormant collection whilst the museum remains closed together with the officer time in ensuring that cataloging of artifacts is undertaken.
- 4.11 Taking these points into consideration together with the likely positive impact that a museum would have on the regeneration of the Town Centre, a matter which is at the fore of Council priority, members may wish to consider that being released from the current burdens of general upkeep that a disposal at this time might be advantageous and that the previous insistence of a claw back can be released in favour of a covenant restricting the buildings use recognising that it is the Council's intention to ensure the furtherance of the building as a museum.
- 4.12 Members are advised that in all other respects the conditions of sale remain as articulated in the Cabinet resolution of the 7<sup>th</sup> October 2009 and that the sale would be conditional on the Friends obtaining charitable status.

### **5. FINANCIAL IMPLICATIONS**

- 5.1 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.

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- 5.2 The current valuation of the building is £285,000. The 'Friends' are interested in purchasing the building for that sum. The Council will pay £13,000 a year non domestic rates plus any costs associated with maintaining the building until a sale is achieved.
- 5.3 If a transfer of the collection is not achieved as proposed to the friends and the Council has to consider the disposal of the collection 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. Members will be aware that the transfer of the collection is dependent on the Friends being able to purchase the museum building.
- 5.4 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. In the meantime the museum remains closed and the building mothballed.
- 5.5 There is a real risk that if negotiations are terminated with the 'Friends' the Council may face legal action which would involve the Council incurring legal costs to defend the Council's position.
- 5.6 It is fair to say that members have previously indicated that their intention is that the building continue to be used for the purposes of a museum and that the proposed restrictive covenant will do little other than secure that this is the intention of the Councils and that in real terms this might ultimately need to be determined by a lands tribunal.
- 5.7 If the sale is approved any budgets currently associated with the provision of the museum building will be included as savings within the medium term financial plan.

### **6. LEGAL IMPLICATIONS**

- 6.1 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

- 6.2 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.
- 6.3 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.
- 6.4 A right of pre-emption or an option can be registered against the title to the land at the Land Registry.
- 6.5 There may be tax implications associated with a right of pre-emption or option which would need to be investigated.
- 6.6 The Council might wish to consider imposing restrictive covenants relating to future use of the land recognising that it is in an attempt to secure the future use of the building as a museum and that in real terms this may need to be a matter for determination by the lands tribunal.

**7. POLICY IMPLICATIONS**

- 7.1 The Council must ensure that all assets are managed in accordance with its priorities and the wider assets management plan. This report is proposing a sale at market value.

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#### **8. COUNCIL OBJECTIVES**

- 8.1 The Council has identified the regeneration of the Town Centre as a priority and the museum falls within the Town Centre.

#### **9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

- 9.1 Members are advised that although the restrictive covenant articulates the Council's intention that the building continue to be used as a museum that it may be challenged in a tribunal environment.

#### **10. CUSTOMER IMPLICATIONS**

- 10.1 The museum is a facility that would become open to the public and would rely on customer support for its future.

#### **11. EQUALITIES AND DIVERSITY IMPLICATIONS**

- 11.1 The building is not currently accessible for persons with physical disabilities.

#### **12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT**

- 12.1 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 nondomestic 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.

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**13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY**

13.1 None associated directly with this report

**14. HUMAN RESOURCES IMPLICATIONS**

14.1 None associated directly with this report

**15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

15.1 None associated directly with this report

**16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998**

16.1 None associated directly with this report

**17. HEALTH INEQUALITIES IMPLICATIONS**

17.1 None associated directly with this report

**18. LESSONS LEARNT**

18.1 None associated directly with this report

**19. COMMUNITY AND STAKEHOLDER ENGAGEMENT**

19.1 None associated directly with this report

**20. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	Yes
Chief Executive	Yes
Executive Director (S151 Officer)	Yes
Executive Director – Leisure, Cultural, Environmental and Community Services	Through CMT
Executive Director – Planning & Regeneration, Regulatory and Housing Services	Through CMT

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Director of Policy, Performance and Partnerships	Through CMT
Head of Service	Through CMT
Head of Resources	Through CMT
Head of Legal, Equalities & Democratic Services	Author
Corporate Procurement Team	Through CMT

**21. WARDS AFFECTED**

All Wards

**22. APPENDICES**

None

**23. BACKGROUND PAPERS**

Cabinet report dated 7<sup>th</sup> October 2009

**24. AUTHOR OF REPORT**

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