

REPORT FOR: **CABINET**

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| Date of Meeting: | 15 February 2014 |
| Subject: | Proposed new museum building adjacent to West House, Pinner |
| Key Decision: | No |
| Responsible Officers: | Hugh Peart, Director of Legal and Governance Services Simon George, Director of Finance and Assurance Caroline Bruce, Corporate Director of Environment and Enterprise |
| Portfolio Holder: | Councillor Stephen Wright, Portfolio Holder for Property and Major Contracts |
| Exempt: | No |
| Decision subject to Call-in: | Yes |
| Enclosures: | Plan showing additional lease demise |

Section 1 – Summary and Recommendations

This report seeks approval for actions to enable the construction of a new museum building adjacent to West House, Pinner by The West House and Heath Robinson Museum Trust.

Recommendations:

Cabinet is requested to recommend to the Council, acting as trustee of the Pinner Memorial Park Trust, that the Council:

1. Authorises the Director of Finance to transfer to The West House and Heath Robinson Museum Trust without recoupment the current balance of funds of circa £25,000 held by the Pinner Memorial Park Trust for the purpose of the construction of the new museum facility, subject to any necessary approval of the Charity Commission.
2. Authorises the Corporate Director of Environment and Enterprise, acting in the best interests of the Council as trustee and in consultation with the Portfolio Holder for Property and Major Contracts, to take all necessary steps to agree and implement changes to the existing lease of West House in order to enable the construction and use of the new museum building.

Cabinet is requested to:

3. Decide whether to authorise the Director of Finance, in consultation with the Portfolio Holder for Finance, to make available a loan facility to The West House and Heath Robinson Museum Trust on the terms set out in paragraph 5.10 of the report.

Reason: To facilitate the construction of a new museum and arts facility for the benefit of Harrow residents and the wider community.

Section 2 – Report

1. Background

- 1.1 The Council owns the freehold of West House and the surrounding parkland as corporate trustee of the Pinner Memorial Park Trust (**PMPT**), a registered charity which was formerly known as the Pinner War Memorial Fund.
- 1.2 In October 2004 the Council, acting as trustee and on recommendation from Cabinet, resolved to grant a lease of West House to the West House and Heath Robinson Museum Trust (**WH&HRMT**) and to transfer £125,000 of PMPT funds to WH&HRMT in order to enable the restoration of the then near derelict West House and to bring it back into public use.
- 1.3 In November 2006 the Council and WH&HRMT entered into an agreement for lease of West House. In the following years, through its own fundraising activities and with the assistance of Council grant

funding, extensive works were undertaken by WH&HRMT in order to repair and refurbish West House.

- 1.4 In May 2010, following completion of the core building works, the council granted a 125 year lease of West House and surrounding land to WH&HRMT.

2. Current Situation

- 2.1 Since opening in 2010 West House and its café, Daisy's, have become popular attractions, enhancing the experience of members of the public visiting Pinner Memorial Park. The facility is self sustaining and operates without requiring ongoing financial support from the Council.
- 2.2 One of the main objects envisaged in the lease of West House was to provide a permanent home for the collection of the William Heath Robinson Trust (**WHRT**), a partner organisation of the WH&HRMT. WHRT holds a large collection of original artworks by former Pinner resident William Heath Robinson (1872-1944), an artist and illustrator of national significance.
- 2.3 West House includes a small temporary gallery space and shop but WH&HRMT consider that the current facilities are inadequate to securely store, display and promote the collection held by WHRT.
- 2.4 WH&HRMT has therefore drawn up proposals for the construction of a new museum building, immediately adjacent to and connected to West House. It is proposed that the museum will house both permanent and temporary exhibition spaces, a new expanded shop and an activity and learning area. In addition to the study of the life and work of William Heath Robinson, it is intended by WH&HRMT that the museum will actively promote the wider study of illustration as an art form with a focus on practical learning and education opportunities.
- 2.5 Planning permission was granted in October 2013 for the proposed new museum building / extension, to be located primarily on what is currently an additional parking area next to West House.
- 2.6 In December 2013 WH&HRMT was awarded an in principle grant of £1.133m from the Heritage Lottery Fund (**HLF**) towards the major part of the costs of the project.

3. Actions Requested of the Council

- 3.1 WH&HRMT have approached the Council to request that the Council, acting in its capacity as trustee of PMPT, consider the following actions to enable the project to continue:

Extend the existing lease demise and vary the lease

The new building for which planning permission has been obtained extends slightly beyond the existing lease boundary. The proposed

additional lease demise, which includes an area of frontage that will not be built upon, is shown for identification purposes only on the plan annexed to this report. Officers have confirmed that the new building will not impact the existing aviary structure and does not involve the removal of any trees. It is proposed that the additional demise will be for nil consideration but in the opinion of the Council's surveyor the additional strip of land restricted for museum use has no commercial value in its own right.

Additionally, in order to comply with HLF's grant terms, the lease would need to be varied to allow HLF or a body approved by HLF and the Council a right of step-in for 25 years in respect of the lease of the new facility should WH&HRMT cease to exist. This is a standard requirement for grants of this nature in order to ensure that the facility continues to fulfil the purposes for which the grant has been made.

Release to WH&HRMT the balance of funds held by PMPT to assist with the project costs

Although the majority of PMPT funds were released in 2004 as a contribution to the restoration costs of West House, the Council still retains a cash balance of around £25,000. This represents the residue of the trust's monies, which are mainly attributable to the sale of the former park keeper's house at 50 West End Lane in 1992. WH&HRMT has requested that these funds are released to it to set against the costs of the new museum development. There has been no call on these remaining PMPT funds since 2004 and officers do not anticipate any call arising in the foreseeable future.

- 3.2 WH&HRMT have also requested that the Council, acting in its own non-trustee capacity:

Provide financial assistance in the form of a loan facility to be drawn down in the event of a shortfall in project funding

Allowing for funds raised to date by WH&HRMT and the HLF grant of £1.133m there is a shortfall of £207,000 currently outstanding towards the total implementation costs of the project. This figure disregards the PMPT monies, which if released would give a current shortfall of £182,000. Through ongoing fundraising efforts and grants the shortfall figure has reduced appreciably from £275,000 when WH&HRMT first approached the Council in October. WH&HRMT are committed to continue to raise funds in order to continue to reduce the shortfall but in the event that a shortfall remains by the autumn of 2014 they would like a loan facility to be made available to them in order to enable the project to continue. The offer of a facility at this stage is required in order to demonstrate to the HLF before drawdown of the grant monies that they have the means to access sufficient funds to complete the project if required. The Director of Finance's recommendation as to the terms of any facility are set out in paragraph 5.10 below.

4. Options considered

- 4.1 Do nothing: The proposal cannot proceed at all without the variations to the lease terms. No museum would be built and WH&HRMT would lose the HLF's external investment in a new arts and cultural facility in Harrow.
- 4.2 Proceed with recommendations 1 and 2 or recommendation 2 only: WH&HRMT would be required to raise the shortfall by another means. HLF is highly likely to consider withdrawing its element of funding if WH&HRMT cannot demonstrate that the project costs can be met in full.
- 4.3 Proceed with recommendations 1,2 and 3: The HLF investment could be released and the construction project to deliver the new museum could commence.

5. Implications of the Recommendations

Legal Implications

The Council's duties as Trustee

- 5.1 In relation to recommendations 1 & 2, when acting as corporate trustee of PMPT, the Council is required to act prudently in the best interests of the charity and in accordance with the objects of the charity and charity law.
- 5.2 PWMT's objects as recorded by the Charity Commission are:

'Land held in perpetuity as an open space laid out with a minimum of disturbance to its natural and rural beauty solely for the recreation, benefit and use of the public in memory of the fallen of Pinner of both world wars and the provision of a small room within West House for as long as it exists, or elsewhere within the Pinner Memorial Park should it not, as a shrine wherein a book of remembrance shall be kept.'
- 5.3 It is not considered that the proposals for the new building, which will primarily occupy a supplemental hard standing parking area adjacent to West House, will adversely impact upon the 'natural and rural beauty' of the memorial park itself. The proposal has planning consent and would provide extra facilities for users of the park, including a dedicated learning and activity space available to local schools. It is considered that it will therefore enhance the amenity of the park setting. Public access to the books of remembrance retained within the existing West House building will be unaffected. The proposal is not therefore inconsistent with the objects of the charity.
- 5.4 Under the Charities Act 2011 charitable trustees generally have an obligation to dispose of land at the best price that can reasonably be obtained and cannot do otherwise without an order of the Charity

Commission. However, in this instance it is considered by the Council's surveyor that the small strip of additional land to be demised has no commercial market value, restricted as it will be under the lease terms for museum use. Additionally, since the disposal will be made to another registered charity (WH&HRMT) with similar charitable objects operating in the Harrow area, s 117(3) of the Charities Act 2011 would apply as an exception to the general obligation. Consequently, no order from the Charity Commission will be required.

The Council's other duties in relation to the additional lease demise

- 5.6 As the strip of additional land to be leased also comprises open space the proposal must be advertised in accordance with s123 of the Local Government Act 1972 and any objections received must be considered prior to completion of any disposal. It is proposed that the consideration of any objections is carried out by the Director of Environment and Enterprise in consultation with the Portfolio Holder for Property and Major Contracts under the authority to be given in recommendation 2.

Release of PMPT funds

- 5.7 In the normal course of events charities are not expected to release capital funds without having a plan in place for their recoupment, although this can be permitted in certain circumstances where the funds are passed to another charitable body to further their objects. Given that the proposal would release all remaining cash assets of the trust it is recommended that the approval of the Charity Commission is sought prior to implementation. The Charity Commission have previously in 2004 given consent to the release of PMPT monies to fund the restoration of West House.

Proposed loan arrangement

- 5.8 The Council has powers under s137 of the Local Government Act 1972 to incur expenditure / provide financial assistance which in their opinion is in the interests of, and will bring direct benefit to, their area or any part of it or all or some of its inhabitants. The Council also has a general power of competence under s1 of the Localism Act 2011 to do anything that individuals generally may do.

Financial Implications

- 5.9 The construction and operation of the new museum facility will be carried out by WH&HRMT and will not therefore be a cost to the council.
- 5.10 The terms for the proposed loan facility are:
- A maximum five year repayment term.
 - A maximum total drawdown facility of £200,000.

- An interest rate equivalent to the rate offered by the Public Works Loan Board to local authorities.
 - The trustees of WH&HRMT offering personal guarantees or other suitable security in respect of its loan repayment obligations prior to any money being advanced.
- 5.11 By offering the loan on the same terms at which the authority can itself borrow money the costs consequences, save for incidental costs of administration of the loan, will be neutral to the Council. The Council would expect quarterly reports from WH&HRMT on the scheme progress and income / expenditure in order to ensure manage risks.
- 5.12 The Council has no general policy of offering loan facilities to organisations, although it may choose to do so exceptionally where it considers that it is in the interests of, and will bring direct benefit to, the borough.

Performance Issues and Priorities

- 5.13 When acting as trustee in relation to recommendations 1 and 2, the Council must act in the best interests of the Pinner Memorial Park Trust.
- 5.14 The project will however also deliver the administration's priority to deliver a cleaner, safer and fairer Harrow:
- by enhancing the amenities available in the Park for the benefit of all members of the local community at no cost to the Council.
 - through WH&HRMT's commitment to maximise the education opportunities of the new museum for the whole community, including school children.

Environmental Impact

- 5.15 The proposed museum building will not be a Council operated facility so will not have any direct impact on the Council's energy usage or emissions targets. As a new structure it will however be required to be built to the latest standards of energy efficiency and insulation.

Risk Management Implications

- 5.16 Risk included on Directorate risk register? No
Separate risk register in place? No
- 5.17 On the making of any loan there is a residual risk of borrower default. This can be managed through regular monitoring and the taking of appropriate security for the loan.

5.18 As freeholder the Council retains a residual responsibility for the site. However, the contractual construction risk and the risk of overspend rests solely with WH&HRMT as the long leaseholder. To manage this risk they will be required to make regular project reports to HLF in order to account for the spend of the capital grant monies. The Council, under recommendation 2, will also enter into appropriate licence to alter arrangements with WH&HRMT to document its consent as freeholder to the construction works. The standard terms of licence include the obtaining of an indemnity from WH&HRMT in respect of the carrying out of the works and confirmation that they have appropriate insurance arrangements in place during the build process. In the event of difficulties with the delivery of the project the Council will have no legal liability to finance additional construction costs or to take over the operation of the facility.

Equalities implications

5.19 It is not considered that the new museum project will have any adverse impact upon persons with protected characteristics. The new museum will be required to have disabled facilities and will provide a range of positive education and learning and development opportunities for a wide range of persons in the community, particularly children through WH&HRMT's proposed core programme for schools.

Section 3 - Statutory Officer Clearance

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|-----------------------|-------------------------------------|-------------------------|
| Name: Simon George | <input checked="" type="checkbox"/> | Chief Financial Officer |
| Date: 21 January 2014 | | |
| Name: Hugh Peart | <input checked="" type="checkbox"/> | Monitoring Officer |
| Date: 20 January 2014 | | |

Section 4 – Performance Officer Clearance

Name: Alex Dewsnap



Divisional Director
Strategic
Commissioning

Date: 20 January 2014

Section 5 – Environmental Impact Officer Clearance

Name: Andrew Baker



on behalf of the
Corporate Director
(Environment &
Enterprise)

Date: 20 January 2014

Section 6 - Contact Details and Background Papers

Contact: Matthew Adams, Principal Lawyer, 0208 424 1403

Background Papers: Report to Cabinet, 14th October 2004

<http://www.harrow.gov.uk/www2/ieListDocuments.aspx?CId=249&MId=2487&Ver=4>

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]