

REPORT TO:	Cabinet		
DATE:	26 March 2025		
PORTFOLIO:	Cllr Kimberley Whitehead – Culture, Heritage and Arts Cllr Noordad Aziz – Deputy Leader of the Council (Transformation, Education and Skills)		
REPORT AUTHOR:	Steve Riley, Executive Director (Environment)		
TITLE OF REPORT:	Appointment of the operator and granting of a lease for Accrington Market Hall		
EXEMPT REPORT (Local Government Act 1972, Schedule 12A)	No	Not applicable	
KEY DECISION:	Yes	If yes, date of publication:	25 February 2025

1. **Purpose of Report**

- 1.1 To update Cabinet on the outcome of the recent tender evaluation process to appoint the operator for Accrington Market Hall and to seek approval for the grant of a lease of the Market Hall and Pavilion to the successful bidder.

2. **Recommendations**

- 2.1 That Cabinet note the report and support the recommendation set out in paragraphs 4.1 to 4.4 of the report, to appoint Northern Lights Group Limited (or a subsidiary company of the same set up for the purpose of the Accrington Market Hall project), as the Council's preferred operator for Accrington Market Hall and Pavilion.
- 2.2 That Cabinet delegate authority to the Executive Director (Environment) in consultation with the Executive Director (Legal and Democratic Services) and subject to a meeting with the Portfolio Holder and operator, to then finalise and agree detailed terms and to grant a lease of Accrington Market Hall and Pavilions to Northern Lights Group Limited (or a subsidiary company of the same set up for the purpose of the Accrington Market Hall project), for a term of up to 15 years, together with authority to complete all necessary ancillary documentation in connection with the same.
- 2.3 That Cabinet note the effects of entering the lease with the new operator for Accrington Market Hall and Pavilion as highlighted in paragraph 3.8, 4.7 and 5.1 of the report.

3. Background

- 3.1 The Levelling Up Fund was announced at the 2020 Spending Review and focused on capital investment in local infrastructure projects that require up to £20m of funding and builds on prior programmes such as the 'Local Growth Fund' and 'Towns Fund'.
- 3.2 In January 2022, Cabinet gave its formal approval in support of the Town Centre Stakeholder Board's recommendations that the Council's LUF submission should focus around the following three principal interventions, noting that at the time of submission, those listed 2 and 3 below were not in the Council's ownership.
1. Redevelopment within the Indoor Market Hall and outdoor pavilions along Peel Street – the intervention known as Market Hall.
 2. Improvements and redevelopment to the block of properties at 43-59 Blackburn Road / 2-4 Church Street – the intervention known as Market Chambers.
 3. Improvements and redevelopment to the block 61-69 Blackburn Road – the intervention known as Burtons Chambers.
- 3.3 There is a risk that the new Market Hall offering may not be a financial success as the Council does not have specific knowledge or experienced staff 'in-house'. This risk has been reduced by choosing to appoint an experienced operator to manage the proposed new and enhanced offerings within the Market Hall.
- 3.4 The Council appointed CBRE through the Crown Commercial Service Framework as lead consultant for the procurement of operators for the Market Hall and Burtons Chambers. CBRE have a specialist and very experienced team and were supported by property consultants Barker Proudlove (BP) who have a very knowledgeable team on market redevelopments.
- 3.5 The work procured from CBRE included:
- Reviewing the proposed product and identifying any key issues or concerns that should be addressed prior to procurement.
 - Providing an initial assessment on the state of the market, competition and precedent developments that provide an opportunity for lessons to be learnt.
 - Summarising the optimum models that could be considered, including viability and potential revenue models.
 - Setting out the delivery method that is most likely to be suitable, informed by feedback gained from operators/potential operators, including a funding compliant procurement approach, explaining the team structure that would best support the procurement process.
 - Presenting findings in a report that clearly sets out recommendations for the operating model and procurement process.
 - Undertaking a compliant tender/procurement process to identify a preferred operator for the Market Hall.

- 3.6 Due to the pressures on the Council's in-house legal resources, addition and support in drafting the proposed lease, has been provided by the Council's external LUF legal advisors, Womble Bond Dickinson.
- 3.7 Both CBRE and BP reviewed the designs and requirements for the Market Hall and Burtons Chambers, identifying the optimum contracting models which would most likely attract a strong operator interest. These being a lease for the Market Hall and management agreement model for the shared office/workspace in Burtons Chambers.
- 3.8 It should be noted that in tendering out the provision for the offerings/management of the Market Hall to a new operator, the Council has accepted it will no longer have any involvement with the management, opening days/hours and day to day operations of the market hall, or in the range of trader offerings and which traders are provided leases. The Council also accepts it will no longer have any involvement in the specific trader leases/levels of rent/service charges applied or legal involvement in the terms and conditions of such leases between the Market Hall operator and traders.
- 3.9 BP have managed the tender process to identify a preferred operator for the Market Hall. The process commenced in October 2023, with a brochure setting out the opportunity, (see Appendix) which was circulated via press releases/social media/LinkedIn, posted on the Council's website, through existing market traders and notices posted on the market pavilions. Following this expression of interest period, BP engaged directly with 10 parties who expressed an interest, having 1 to 1 discussions and a number of accompanied site visits in November 2023 and January 2024. The closing date for return of tenders was set at the first week in February 2024.

4. Evaluation of the Tenders

- 4.1 The tenders were based on information being provided across the following sections below to establish a shortlist for progressing (see Appendix). BP received and presented four submissions to review. The Council and BP concluded there was sufficient merit in the proposals to warrant a face-to-face meeting with all four organisations.

Section 1 – Covenant

- Proposed Tenant
- Guarantor
- Deposit
- Funding

Section 2 – Strategy to maximise benefits for Hyndburn

- Experience
- Use
- Opening Times
- Social Value
- Marketing Strategy
- Market Layout

Section 3 – Lease Term

- Lease Term
- Break Options
- Rent
- Rent Review
- Incentive
- Business Rates
- Repairs

Section 4 – Inspection, Joint PR, Conditions and potential TUPE

- Inspection
- Timing
- Joint PR
- Conditions
- TUPE

- 4.2 Individual meetings took place with each of the four organisations on the 9 and the 23 April 2024, involving the Council's Chief Executive, Executive Director (Environment) and BP. These were not formal interviews, but were used as a way to interrogate gaps in the initial submissions and for the Council to assess whether they could have a productive relationship with the organisations/owners. The Market Hall will house small independent traders/businesses and while the Council's only formal relationship with the operator would be that of landlord/tenant, given the importance of The Market Hall to the regeneration of the wider town centre with residents and stakeholders, a good professional relationship was deemed essential.
- 4.3 The outcome confirmed there were no concerns around the potential for working with any of the organisations, thereby allowing BP to progress further discussions and confirmation as to what was required in the final bid process. Three final proposals were received, with the fourth organisation deciding not to submit as the bidder felt there was insufficient detailed information being provided in relation to the Market Hall.
- 4.4 A final meeting between BP and the Council was held on 20 May, where each of the three submissions were discussed in detail. The Executive Summary provided by BP is highlighted below:

Rationale for the redevelopment of The Market Hall, Accrington

Accrington town centre needs a renewed sense of identity. There is ample evidence that a newly refurbished market hall can effectively re-anchor an underperforming town centre. Barker Proudlove also understands the proposed strategy for the Market Hall could save Hyndburn Council in the region of £200,000 per annum before any rent is received.

Marketing began in November 2023. Our instructions were to secure an operator on an arm's length basis, making an occupational lease the best solution. Marketing material stated that lease terms carried a 30% weighting,

covenant 20% and the operator's strategies to maximise benefits for Hyndburn was 50%. The first phase of marketing generated seven viewings. Four initial bids were then received. All parties that had bid met with representatives of Hyndburn Council and Barker Proudlove. Final bids were requested to be returned by Friday 10 May. Three final bids were received.

Applicant 1 was a start-up company requiring significant ongoing capital from the Council in addition to the money already being invested in fit-out and refurbishment. Applicant 1 was discounted on that basis.

Applicant 2 offered to provide PGI Underwriter Insurance whereas Applicant 3 offered an intercompany guarantee and a rent deposit. Applicant 3's offer was preferred.

Both parties had good levels of experience. Applicant 2's business was purely markets whereas Applicant 3 had a broader range of businesses, including markets and food halls. Applicant 3's operation and success in both food and beverage and markets was considered more favourable.

Applicant 3 offered a more compelling record in social value, providing a broad summary of work with specific charities and three named local authorities. Both parties were strong on growing and developing local businesses, training, and development. Applicant 3 scored higher in the team's view.

Applicant 2 scored well on marketing on account of their wide database of potential target tenants. Applicant 3 provided the added benefit of being able to step in immediately should a food business fail. The team felt the importance of food and beverage made applicant 3 stronger.

Applicant 2's proposed turnover rent percentages were higher, but not markedly. Both were based on turnover, therefore trading performance is the main factor driving rent in any event.

CONCLUSION

The current preference of the evaluation panel is to progress with Applicant 3, subject to agreeing detailed Heads of Terms.

- 4.5 The Council proposes to grant a lease of the Market Hall. Section 123 Local Government Act 1972 generally requires the Council to dispose of its land and property for the best consideration reasonably obtainable. In this instance the opportunity to lease the Market Hall was publicly advertised and three bids were received. The proposed tenant submitted the most financially advantageous bid, and as such, the disposal is considered to be the best consideration obtainable. As the disposal is at market value, the grant of the lease does not constitute, or include, a subsidy for the purposes of the Subsidy Control Act 2022.
- 4.6 Having taken external legal advice, it appears that the proposed lease complies with the requirements of the Accrington Improvement Act 1882, which prohibits the granting of market leases and the letting of market tolls and profits arising under that Act for a

term in excess of three years. Although the age and unusual nature of this legislation make it hard to be totally certain, the barrister consulted by the Council (Joanne Clement KC) was satisfied that the Act applies to the granting of leases of individual market stalls and not to the granting of a lease of the Market Hall building itself. Similarly, the proposed arrangements for calculation and payment of the rent do not constitute the sub-letting of a market stall and profits (which can be distinguished from rent in law).

- 4.7 With regards to the new shared office/workspaces venture for Burtons Chambers, the Council has been prudent in setting aside a financial sum to cover any potential financial liability which is contractually due to the operator under the Management Agreement during the initial start-up period. Whilst the lease for the Market Hall is very different, it would be prudent for the Council to consider identifying some financial provision to support the new operator in initial promotion of the Market Hall's new venture and also after the initial opening excitement has expired, possibly in years two or three. There will also be some repair and maintenance obligations retained by the Council under the lease for the physical structure of the building, (external façade, windows, doors, roof, pavilion structure/roof etc.) even given the total redevelopment of the market hall through LUF funding. It is intended that the many of these costs will be recovered from the operator by way of a fixed service charge, but actual costs will vary from year to year and so there will be some financial liability if the Council is to meet all of its obligations in the lease.

5. Alternative Options considered and Reasons for Rejection

- 5.1 The Council could choose not to appoint an operator and manage the facility itself. This is not recommended as the Council recognises it does not have specific knowledge or experienced staff 'in-house' to manage a market hall facility with an enhanced food/beverage and leisure offering on such a high-profile town centre project. In agreeing to appoint an operator, the Council has acknowledged it will no longer have any involvement in the management of the Market Hall & Pavilion, range of trader offerings/which traders are provided leases, and no involvement in any trader leases, levels of rent/service charged or terms and conditions of such leases between the operator and traders.
- 5.2 The Council could choose not to identify financial provisions as suggested in paragraph 4.7. This is not recommended as it would be prudent for the Council to make some in-principal decision to support the operator with promoting the new venture during the initial opening and afterwards to ensure its continued success.

6. Consultations

- 6.1 Progress reports continue to be provided to Cabinet/Portfolio Holders, Special Scrutiny Committee, Accrington Town Centre Stakeholder Board, Corporate Management Team and lead officers meetings for the Council's strategic projects with the Chief Executive.

7. **Implications**

<p>Financial implications (including any future financial commitments for the Council)</p>	<p>The redeveloped Market Hall will be a new venture, and it is unknown if the facility will maintain the success after the initial opening period, typically in year two / three. To mitigate this risk, the Council could consider setting aside some UKSPF funding (from its 2025/26 allocation) for use in supporting/publicising the initial opening but also consider other promotional funding at a later date to support its ongoing success.</p> <p>Whilst there should be little call for capital maintenance following the LUF funded redevelopment works within the initial years of reopening, the Council needs to recognise its repair and maintenance responsibilities under the lease with the new operator and ensure it identifies where such future maintenance / estate management costs will be met from.</p> <p>Whilst legislation makes it clear there would be a requirement for the transfer to staff to the new operator, there is a wish from the small number of remaining markets staff to continue employment within the Council and “opt out” of TUPE transfer to the new operator. The current proposals is therefore based on the assumption that these staff will remain in the Council’s employment.</p> <p>Staff choosing to continue their employment within the Council reduces the level of savings from the existing market budget. However, one member of staff has indicated their wish to retire in late 2025 and another indicated they would wish to take redundancy, which if granted, would result in the Council incurring a final ‘one off’ cost.</p>
<p>Legal and human rights implications</p>	<p>The operator was procured using advertising and reaching out to the market for interested parties. As the proposed operator for a property lease has been identified through a competitive process, the question of subsidy does not arise and the Subsidy Control Act 2022 does not apply to the proposed Lease</p>

	<p>with the operator.</p> <p>The grant of a lease for a term of 15 years is considered to be a disposal of land for the purposes of s123 Local Government Act 1972. Provided that the terms of the lease are for a consideration that is the best that can be obtained, consent to the disposal is not required from the Secretary of State. This report sets out why the disposal is considered to be for best consideration.</p> <p>The lease is to be contracted out of the Landlord and Tenant Act 1954, part II, which means that the operator will not have a statutory right to seek a further lease on the expiry of the first one.</p> <p>Neither CBRE nor BP are legal specialists so the Council's LUF legal advisors Womble Bond Dickinson, led on drafting the lease, which the Council will enter in to with the new Market Hall operator.</p> <p>Counsel's advice has confirmed the proposed lease appears to comply with the requirements of the Accrington Improvement Act 1882 which prohibits the grant of market leases and the letting of market tolls and profits arising under that Act for a term in excess of three years.</p> <p>There is a wish from the existing markets staff to remain in the employment of the Council and to "opt out" of TUPE transfer to the new operator. The Council's HR team has advised on the legislation and other options, such as redeployment and redundancy. This has been achieved through liaising with individual members of staff and their union representatives to understand their preferences, skills and experiences to identify any suitable positions with the Council, once the Market Hall reopens in late 2025.</p>
<p>Assessment of risk</p>	<p>There is a risk that the new Market Hall offering may not be a financial success as the Council does not have specific knowledge or experienced staff 'in-house'. This risk has</p>

	<p>been reduced by choosing to appoint an experienced external operator to fully manage the proposed Market Hall's new offerings.</p> <p>There is a risk around any breach of the operator's financial obligations where the lease could not be successfully enforced. This is mitigated by the provision of a lease guarantor through Dockyard Media City Limited, The Vicarage, 31 Great King Street, Macclesfield Cheshire, SK11 6PL (company number 08557056).</p> <p>There is a risk that the Market Hall operator continually fails to deliver the required offerings. This is mitigated by a clause in the lease that sets out in full the circumstances in which the Council is entitled to terminate the lease. In short, these are in the event of non-performance against the Key Performance Indicators and includes measures such as financial performance, occupancy rates, business support provision, reporting requirements and promotion of the Centre.</p> <p>The operator may seek to terminate only in the event of a material breach of the lease by the Council or an act of insolvency.</p> <p>Whilst there should be little call for capital maintenance following the LUF funded redevelopment works within the initial years of reopening, the Council needs to recognise its repair and maintenance responsibilities under the lease with the new operator and ensure it identifies where such future maintenance / estate management costs will be met from.</p>
<p>Equality and diversity implications <i>A Customer First Analysis should be completed in relation to policy decisions and should be attached as an appendix to the report.</i></p>	<p>An EIA was not required for this report as the tender for the lease of the Market Hall was undertaken through an open tender process by the Council's external consultants CBRE and Barker Proudlove.</p>

**8. Local Government (Access to Information) Act 1985:
List of Background Papers**

Town Centre Investment Plan and Levelling Up Funding Bid to Council – January 22
<https://democracy.hyndburnbc.gov.uk/ieListDocuments.aspx?CId=130&MId=2603&Ver=4>

Levelling up Update to Cabinet – June 23
<https://democracy.hyndburnbc.gov.uk/ieListDocuments.aspx?CId=133&MId=2795&Ver=4>

Levelling Up Funded Projects update to Special Scrutiny Committee – July 23
<https://democracy.hyndburnbc.gov.uk/ieListDocuments.aspx?CId=323&MId=2814&Ver=4>

Levelling Up – General update and Operator Procurement - September 23
<https://democracy.hyndburnbc.gov.uk/ieListDocuments.aspx?CId=133&MId=2797&Ver=4>

LUF project and other submission updates to Cabinet - February 24
<https://democracy.hyndburnbc.gov.uk/ieListDocuments.aspx?CId=133&MId=2801&Ver=4>