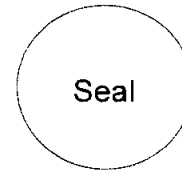


Judicial Review Claim Form

In the High Court of Justice
Administrative Court

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

For Court use only	
Administrative Court Reference No.	
Date filed	



SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name Jacob O'Callaghan	
address 4a Bishopswood Road Highgate London N6 4NY	
Telephone no.	Fax no.
E-mail address joc@cix.co.uk	

Claimant's or claimant's solicitors' address to which documents should be sent.

name Kate Harrison	
address Harrison Grant Solicitors 15 Wolsey Mews London NW5 2DX	
Telephone no. 020 7267 6727	Fax no. 020 7267 6272
E-mail address kateharrison@hglaw.co.uk	

Claimant's Counsel's details

name David Wolfe	
address Matrix Chambers ref:59507 Griffin Building Gray's Inn London WC1R 5UN	
Telephone no. 020 7404 3447	Fax no. 020 7404 3448
E-mail address davidwolfe@matrixlaw.co.uk	

1st Defendant

name The Charity Commission for England and Wales	
Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.	
name Arnikka Macintyre-Daly	
address Treasury Solicitors ref:LT70214A/AVD/3B One Kemble Street London WC2B 4TS DX 123242 Kingsway	
Telephone no. 020 7210 3468	Fax no. 020 210 3001
E-mail address arnikka.macintyre-daly@tsol.gsi.gov.uk	

2nd Defendant

name	
address	
Telephone no.	Fax no.
E-mail address	

Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.

SECTION 2 Details of other interested parties *and see attached details for 3rd interested party.*

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name
Howard Kennedy Solicitors on behalf of the Trustees of Alexandra Palace

address
Howard Kennedy ref:IMH1/014086.00049
19 Cavendish Square
London W1A 2AW

DX 42748 Oxford Circus North

Telephone no.
020 7636 1616

Fax no.
020 7664 4586

E-mail address

name
Lewis Silkin Solicitors on behalf of the potential lessees (Firoka)

address
Lewis Silkin LLP ref:JDL/FXW/3393.184/1472552-1
5 Chancery Lane
Clifford's Inn
London EC4A 1BL
DX 182 Chancery Lane

Telephone no.
020 7074 8000

Fax no.
020 7864 1200

E-mail address

SECTION 3 Details of the decision to be judicially reviewed

Decision:
Order of the Charity Commission for England and Wales

Date of decision:
4th May 2007

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

name
The Charity Commissioners

address
Harmsworth House
13-15 Bouverie Street
London EC4Y 8DP

SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)? Yes No

Are you making any other applications? If Yes, complete Section 7. Yes No

Is the claimant in receipt of a Community Legal Service Fund (CLSF) certificate? Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463 and file this with your application. Yes No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the space below. Yes No

Does the claim include any issues arising from the Human Rights Act 1998?
If Yes, state the articles which you contend have been breached in the space below. Yes No

SECTION 5 Detailed statement of grounds

set out below attached

SECTION 6 Details of remedy (including any interim remedy) being sought

The claimant seeks:

- a declaration that the Order of the Charity Commission for England and Wales of 4th May 2007 was unlawful;
- an order quashing the Order, and
- such further or other relief as the court consider appropriate.

SECTION 7 Other applications

I wish to make an application for:-

The Claimant is contemplating making an application for a protected costs order. However, at this stage negotiations are continuing and for this reason non is made at this stage.

SECTION 8 Statement of facts relied on

attached

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name Kate Harrison

Name of claimant's solicitor's firm Harrison Grant

Signed  Position or office held Partner
Claimant ('s solicitor) (if signing on behalf of firm or company)

SECTION 9 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|-----------------------------------|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application to extend the time limit for filing the claim form | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or CSLF certificate <i>(if legally represented)</i> | | |
| <input checked="" type="checkbox"/> Copies of any relevant statutory material | | |
| <input checked="" type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form:

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed _____ Claimant ('s Solicitor) _____

Re: R on the application of Jacob O'Callaghan

Judicial Review Claim Form

Additional information, page 2

SECTION 2 CONTINUED

Name, address and details of 3rd interested party.

Name

The Attorney General

Address

Eleanor Hay
Treasury Solicitors
One Kemble Street
London WC2B 4TS

Direct line: 020 7210 3418

Direct fax: 020 7210 3232

Eleanor.hay@tsol.gsi.gov.uk

Reference: LT2027F/EFH/1EP

IN THE ADMINISTRATIVE COURT

BETWEEN:

JACOB O'CALLAGHAN

Claimant

-and-

THE CHARITY COMMISSION

Defendant

- and-

THE TRUSTEES OF ALEXANDRA PARK AND PALACE

FIROKA (ALEXANDRA PALACE) LIMITED

FIROKA (KINGS CROSS) LIMITED

THE ATTORNEY GENERAL

Interested Parties

**STATEMENT OF FACTS AND
GROUNDS OF CHALLENGE**

Page references are to the claimant's bundle/tab/page number.

Summary and overview

1. The claimant seeks permission for a judicial review challenge of the legality of the Charity Commission's Order of 4 May 2007 [CB/4/21-23] permitting the Trustees of Alexandra Park and Palace to enter into a 125 year lease of the Alexandra Park and Palace with Firoka (Alexandra Palace) Limited and Firoka (Kings Cross) Limited (together: "Firoka") by which Firoka will (pursuant to a "project agreement" also with the Trustees) occupy and redevelop Alexandra Palace.
2. It is well established that if a public body embarks upon a consultation, that consultation must satisfy the basic requirements of procedural fairness¹ including²:

¹ See, for example, Maurice Kay J in Medway Council -v- Secretary of State [2002] EWHC 2516 paras 18 and 28, the Court of Appeal in Edwards -v-

"To be proper, consultation must be undertaken at a time when proposals are still at a formative stage. It must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken" [underlining added].

3. The claimant submits that the Order here is unlawful because the consultation which preceded the decision to make the Order was critically flawed by the fact that consultees, including the claimant, were not provided with copies of the proposed lease and linked project agreement (which were central to the decision before the Charity Commissioners and considered in detail by them when deciding to make the Order, as explained further below), nor thus able to make comments on those things.
4. It should, however, be noted that the claimant and the members of the "Save Ally Pally Campaign" of which he is part, are not by any means opposed in principle to the granting of leases by the Trustees or to appropriate development of Alexandra Palace. Their concern is to ensure that any such leases are in appropriate terms and sufficiently protect and safeguard the interests of the wider public in Alexandra Palace as beneficiaries of the 1900 trusts, in particular that the Palace should remain available for the free use of the public for recreational and educational public purposes. The parts of the Palace closed off for private, commercial use, and the days on which this is done, should only be the minimum necessary to provide funds for the not-for-profit, public benefit areas and activities within the building.

Background

5. In his witness statement, the claimant outlines some of the history of Alexandra Palace and explains his interest in it and concern for it. He has no private interest in Alexandra Palace. His concern for it, and the bringing of this case, is purely in the public interest.
6. The Interested Parties are:

Environment Agency [2006] EWCA Civ 877 and Sullivan J in Greenpeace -v- Secretary of State [2007] EWHC 311

² Per Lord Woolf MR in R. v. North and East Devon Health Authority ex parte Coughlan [2001] QB 213, 258 [108]

- (1) The Trustees of Alexandra Park and Palace (understood to be either the Mayor and Burgesses of the London Borough of Haringey, or the Council of the London Borough of Haringey)
 - (2) Firoka (Alexandra Palace) Limited and Firoka (Kings Cross) Limited – “Firoka” – the prospective tenant
 - (3) The Attorney General - who has asked to be served as an interested party because the claim affects a charity.
7. By the Charities (Alexandra Park and Palace Order) 2004, the Charity Commission made a scheme pursuant to its powers under Section 17(1) of the Charities Act 1993 which allowed the Trustees to enter into a lease of Alexandra Palace “subject to the consent by order of the Charity Commissioners”.
8. During parliamentary debate on the 2004 order, Fiona McTaggart, MP, Parliamentary Under Secretary for the Home Department, had said this:

“There are other important safeguards connected to issues raised by Hon Members. First, there will be consultation on many proposals. The Charity Commission must authorise the grant of any lease, and it will be possible to raise concerns with the commission. One of the commission’s roles is to safeguard the interests of the charity’s beneficiaries, as well as to ensure that the trustees maintain their duties under the trust. I am quite certain that the lengthy procedure will continue in that regard.

However, it is important that there is an opportunity to have specific consultation on the beneficial interest, as well as on issues connected with established procedures such as planning. I therefore asked the commission for an undertaking, which I have now received, to publish the draft of any order that it might make authorising a lease under the scheme, and to invite and consider any representations that it may receive.

In view of the time it has taken, it seems right that there should be consultation on how beneficial interests should be protected and to ensure that they are so protected. I urge those commenting on the order to focus on those issues rather than those that relate to planning and other matters. The Charity Commission will authorise a specific lease only if the trustees can demonstrate that it is expedient and in the interest of the charity.” [CB/8/290]

9. Although that provided the background to the subsequent consultation process, it did not in law constrain that process.
10. As noted above, when a public body embarks on a consultation (even a consultation which it was not required by, say, statute or a prior promise to consult), that consultation must nonetheless comply with the essential requirements of a lawful consultation, as outlined above.
11. As to the content of the consultation here, the Trustees wrote to the Charity Commission on 2 March 2006 (a letter which the claimant only received pursuant to a request under the Freedom of Information Act and after the consultation had taken place) saying [CB/7/174]:

“What I had understood from our conversation on 23 February was that the Commission might decide that the draft Lease would need to be published [in the consultation].

Your letter of 23 February indicates that it is likely that the Order would need to be published.

If I have misunderstood the position with regard to the lease I am obviously pleased but would ask you to confirm that you will not require the draft Lease terms to be published.

Presumably what will need to be published is not the Order itself but the Commission’s intention to make an Order. This would be consistent with the view you expressed that members of the public would need to be consulted and given an opportunity to object. Obviously, if the order is published such opportunity would have passed.” [underlining in the original]

12. On 15 March 2006, the Charity Commission replied [CB/7/176]:

“It is likely that the order will need to be published as this such an important local issue. You are correct in understanding that it is the fact that it is the Commission’s intention to make the order that is published (with the public having sight of the draft order upon request) rather than the sealed executed order. I can confirm that we will not require the lease terms to be published.”

13. Correspondence between the Charity Commission and the Trustees in that period [CB/7/176] shows that the Charity Commission (correctly) nonetheless took the view that it would need to consider the specific lease and its terms in contemplation (and not just the

principle of a lease or the principle of an order) when deciding whether to make an Order.

14. As explained further below, that was consistent with the approach it and the Trustees later (correctly) took when considering the issues raised by consultees in relation to the lease and the Order.
15. In any event, against that background, on 28 November 2006, the Charity Commission published a draft Order [CB/5/27-29] together with an explanatory question and answer sheet (but not the draft lease or the project agreement) that explained that: [CB/5/25]

"The Charity Commission's order will have the public notice given to it for a minimum period of a month. During this time members of the public are able to make representations about the order to us for consideration. We are publishing the draft order in a number of places to ensure that it is available for public comment. These places include The Times newspaper, our website, the Alexandra Palace website, local London papers including Hampstead and Highgate Express, and the Muswell Hill Journal and also on notice boards at the Palace and Park. The order will be published the last week in November and representations should be made by noon on Friday 5 January 2007."

16. It then continued [CB/5/26]:

"An officer who has not dealt with this charity will consider all representations made and will decide if we should go ahead and make the order and/or if changes should be made to the order. The final decision on whether to make the order will take account of all the information, evidence and arguments received."

17. The attached draft Order contemplated authorisation of the Trustees to enter into "a lease" and gave definitions. They included that:

"The lease" means a lease substantially in the form of the draft provided to the Charity Commission on 2 November 2006 in respect of land at Alexandra Palace for a term of 125 years, and between the mayor and burgesses of the London Borough of Haringey, Firoka (Alexandra Palace Limited) and Firoka (Kings Cross) Limited."

18. The draft Order also explained that [CB/5/29, para 5(1)]:

"The trustees shall, at the same time as granting the lease, enter into the project agreement with Firoka (Alexandra

Palace Limited). The project agreement must identify the development works to be carried out in suitably defined phases with means to identify the performance (or non-performance) of development obligations and completion of each phase. The project agreement shall also include the valid guarantee of a suitably secure guarantor in respect of those obligations and any cap on the guarantee shall not, in the trustees' reasonable opinion, based on appropriate professional advice, materially prejudice the charity given the risks of non-performance or part performance of each phase and the risks of cost overruns."

19. In the draft Order the following further definition was provided:

""The project agreement" means the project agreement substantially in the form of a draft provided to the Charity Commission on 2 November 2006."
20. What is thus clear (and the stance taken by the Charity Commission when it reached their decision, as below, further confirmed the point) is that the draft lease and proposed project agreements are inextricably linked and the lease can only be read and understood against the background of the project agreement.
21. However, in the consultation process, the Charity Commission did not make available to consultees either the draft lease or the project agreement (nor, as it happens, did the Trustees or Firoka).
22. In any event, 328 representations were received by the Charity Commission of which (according to an analysis of the responses undertaken by the Trustees) 4 were in support of the proposal with 324 expressing "at least some concern about aspects of the proposals".
23. Mr O'Callaghan was one such consultee and respondent.
24. On 3 November 2006, Mr O'Callaghan wrote to the Charity Commission [CB/5/33-36] expressing opposition to the making of the Order. Among other things he said this [CB/5/33]:

"However, we have been advised of some details of the lease now being proposed pursuant to the scheme and it is evident that there is grave doubt as to whether undertakings given in the debate about the scheme by the minister, including assurances as to the preservation of the historic structures and areas, are being honoured. My committee have therefore again asked me to write. However, it is self evident that we cannot object in detail to the scheme and the lease

until we have sight of both and we trust that you will direct this be done, in line with the undertakings given in parliament about the rights of objectors." [italics in the original]

25. On 4 January 2007, in the consultation, Mr O'Callaghan wrote again stating: [CB/5/31]

"The order refers to the proposed lease. Although neither the terms of this lease, nor a plan of the exact land to be leased, have been included as an appendix to the published draft order, so making this "consultation" meaningless (because no one can comment on what one is not allowed to see), the commission knows as we do, that the area of the land in the proposed lease to be reserved for the purposes of this charity is in reality confined to the theatre and a tiny corner for a museum."

26. Other local people wrote expressing similar concerns about the need to see the lease in order to properly comment in the consultation, see thus, for example [CB/5/39-40]:

"Crucial importance of the terms of the lease which have not been disclosed.

The commercial priorities of the lessees are clear. Why else should they be so secretive about the terms of the lease? And why else should they shy away from any kind of meetings with the residents to explain their intentions? They have been invited repeatedly to a meeting (public or private, their place or ours) to explain their intentions and they have always been so busy. We have been left in the dark and must conclude that they want to keep it that way.

So the questions I would like to see answered are:

1. Are the lessees paying a substantial sum up front, as a premium for the purchase of the lease? If so, then that will provide a strong disincentive to action and make it much less likely that they would wish to hand the lease back if they can't make a profit out of it.
2. How will the "guarantee" work if the lessees simply go slow on the project agreement, or perhaps find excuses for not starting? One knows how easily large building contracts risk into arbitration and lawyers fees. Wembley Stadium anybody.
3. Finally, in what circumstances will the lessor be entitled to forfeit the lease? A flagrant breach of covenant would provide solid ground. What if there is a failure,

or refusal, to comply with the project agreement? Is this tied in with the lease? Or can the lessees break the agreement but keep the lease and sell it on, notwithstanding?

Without satisfactory answers to these questions, the order should not be made.

Because the lessees have refused to let the public in on the terms of the lease and the project agreement I do not know whether there are satisfactory answers to these questions. But I suspect not; and I urge the Charity Commission to proceed no further with this order unless there are clear and positive answers to all three."

27. The Charity Commission then produced a summary of the representations which had been made by consultees and provided the summary to the Trustees for the latter's comment. Those matters thus appear in a report to the Trustees from their officers which is at CB/5/43 – 96. Within that report, the summary of representations (i.e. that prepared by the Charity Commission) is at CB/5/46 – 54. Within it the Charity Commission said this [CB/5/50,] para 5.5:

"Sufficiency of notice period and notices, lack of consultation and lack of disclosure of information.

...

- The Commission should consider if the lack of disclosure of the draft lease and other documents during the publication period is a critical factor when considering whether to authorise the disposal.

There was a general concern amongst respondents about an insufficient consultation and lack of transparency about the proposals. A number of respondents thought that the Commission's notice period was insufficient and should not have included the holiday period. Representations include:

...

- The lease and project agreement should have been made public (or parts of it) before the notice period. As it is the public do not know what covenants are contained in the lease or what else they may wish to make representations about."

28. As mentioned above, the Trustees then commented on that summary of the representations. They did so in a letter from their solicitors to the Charity Commission dated 13 February 2007

[CB/5/56 - 68] It is notable that, within that document and in response to representations made by members of the public, the Trustees referred in detail to, and quoted from, the draft lease and the project agreement.

29. The Trustees' response to representations also commented on the points made at paragraph 5.5 in the summary of representations, as above. In relation to the widely expressed concern about the non-provision to consultees of the draft lease and project agreement, the Trustees said simply this [CB/5/64para 5.5.2 (e)]:

"On the issue of representations it must be that it is part of the public's right to make general representations. It cannot be appropriate as part of any consultation exercise for the public to be able to make representations on detailed provisions of complex legal documentation that has been agreed following complex and protracted negotiations."

30. However, no specific reason was identified why those materials should not be provided to consultees.

31. In any event, the decision on whether to make an order came before a Commissioner in the light of a report dated 2 March 2007 [CB/6/97-101]. That report explained that [CB/6/98]:

"The lease requires the Commission's consent, under the Charities (Alexandra Park and Palace) Order 2004 and Section 26 Charities Act 1993. During a parliamentary debate in 2004, Fiona McTaggart MP announced that she had received an undertaking from the Commission to publish the draft of any order it might make authorising a lease and to invite and consider any representations it may receive."

32. The report then referred to the lease [CB/6/99 para. A.3] a copy of which was provided to the Commissioner making the decision. The report then referred, in detail, to particular provisions of the lease including as follows:

"The user provisions in clause 3.11 of the lease specify various uses and ancillary uses for the premises. The user provision does however make it clear that the use which is inconsistent with the act is not permitted. The user clause has been amended to ensure the precedent of that requirement was clear.

Clause 3.12 provided the trustees with some rights which can be used to protect the use of the remaining park. These

rights enable the trustees to prevent the use of premises not in accordance with the provisions of the act.

Clause 3.1 provides for the payment of premiums and rents. Schedule 2 further explains the profit rent. These provisions implement the commercial terms previously agreed and commented on by King Sturge in their report of 1 May 2006. King Sturge consider that the premises in their current state would only attract a peppercorn rent. They confirm the view that the disposition as contemplated represented the best disposition for the Charity in accordance with the Charities Act 1993. It was later confirmed that the rent represented the best rent reasonably obtainable, regard being had to the requirement for use to be consistent with the purpose of the act. Please see Annex E in this regard."

33. The report then explained the public consultation process and said that [CB/6/100] para B.1:

"The process has given the opportunity for those with concerns about the proposals to give their point of view. It should be noted that those who had concerns about a particular aspect of the proposals did not necessarily express overall support or opposition to the granting of the lease. We have produced a summary of representations paper. This paper does not provide answers, comment or evidence to verify any of the representations received.

...

The trustee has had site of the summary of representations paper which was discussed at their trustee meeting on 20 January 2007. When sending this paper to the trustee we asked them to consider specifically four main issues:

- The CUFOS building (the old station, a registered charity, and community centre);
- The original TV studios and broadcast heritage museum;
- The Willis Organ and Theatre;
- The proposals for monitoring the covenants in the lease.

The two letters in response from the trustee, both dated 21 February 2007, are attached at Annex G.

The trustee has considered in detail the representations. They have provided detailed comment under representations. They do not feel the representations provide any new

evidence for the trustees to take action it hasn't already taken, except for the issue of the CUFOS building. It has agreed, provided the developer unconditionally agrees, to vary the terms of the lease of the old station to bring it within the protection of part 2 of the Landlord and Tenant Act 1954. This would provide the tenant charity with some limited right to protection and renewal when the lease term expires in March 2011. The developer has agreed to this on the basis that the Commission issues its immediate consent."

34. Finally the report commented on the decision making process thus [CB/6/100 para B.4]:

"We are making the order under the power given in the parliamentary scheme and under section 26. Strictly speaking, the procedure laid down in OG1 for considering representations about the schemes doesn't apply. As this is a draft order, the decision review procedure doesn't apply either. As we have an undertaking to consider representations, the case is analogous to the making of a section 16 scheme and in the absence of any policy, we have adopted the same procedure. When considering the criteria for conducting a Commissioner Review, consideration is given to novel or controversial issues. The reviewing of representations by a Commissioner will obviate any further review.

...

The Commissioner is asked to consider the representations and decide if the Commission is in the position to make the order on the terms proposed."

35. Similar comments about the issues and process were then made in a memo of 6 March to the members of the Charity Commission [CB/6/102-103].

36. On 27 April 2007, the Charity Commission then made its decision. The record of that decision explains that [CB/6/104]:

"The Commission on 28 November 2006 gave public notice of its intention to authorise the Charity to lease the Palace and immediate surrounding land to a developer for a term of 125 years by way of order made under the scheme. The notice invited representations to be made by members of the public to the Commission about the proposed order. A substantial number of representations were received.

The representations now needed to be considered by the Commission before determining whether the authorisation should be given."

37. The record then reports the consideration of representations [CB/6/108B para 5.3]. However, none of the issues identified concerned the issue which had been identified in the summary of representations and responded to by the trustees, namely the complaint by consultees that they needed to see the lease and project agreement in order to properly comment on the decision before the Commission. In any event, the record then records the following [CB/6/110] para 6 conclusion:

"Having considered the issues and representation as set out respectively in paragraphs 4 and 5 above, the Commissioners concluded that they were satisfied that the proposed lease is permitted by the terms of the order. The Commissioners were also satisfied that the trustee has exercised its discretion properly in deciding to enter into the proposed lease arrangement and that the proposed lease is beneficial and in the interests of the Charity. Consequently the Commissioners were satisfied that subject to the comments below they should authorise the grant of the proposed lease as being expedient in the interests of the Charity.

The Commissioners noted that the board's consideration to the proposed lease had been dependent on its consideration of the associated project agreement. The proposed lease should, therefore, in the Commissioner's view, only be entered into if the project agreement is also entered into.

The Commission has noted the following, that following the grant of the proposed lease, the trustee will retain the important functions in monitoring and enforcing the covenants over the Palace. It must fulfil these functions in order to manage and protect the Park and Palace.

The Commissioners noted that in response to the consultation the Commission has secured the agreement of the trustee to grant the Charity CUFOS protection of its lease of the old station building under the Landlord and Tenant Act 1954. The Commission's order will also make directions to the trustee to ensure the statutory advisory committee's role in respect of the Palace is understood.

In conclusion the Commissioners were satisfied that the proposed lease falls within the scheme, that the decision is in furtherance of the objects and powers of the Charity, that the decision to enter into the proposed lease was properly taken by the board in the best interests of the Charity. The Commissioners' were satisfied that the decision to enter into the proposed lease by the board was in the interests of the Charity and provided an advantageous means of furthering its purposes, and consequently will be authorised under the

Charities (Alexandra Palace Park and Palace) Order 2004 as being expedient in the interests of the Charity. The Commissioners decided that the order will make additional directions to the trustee to ensure the role of the statutory advisory committee in relation to the grant of the proposed lease and the management of the Charity is adhered to."

38. On 4 May 2007, the Charity Commission made the Order in the terms of the consulted upon draft [CB/4/21-24].
39. On 4 June 2007, the Charity Commission reviewed that decision in the light of representations made by Mr O'Callaghan arising from his concern about the "general untrustworthiness of statements made to [the Commission] about the accounts of the Charity on behalf of the trustee." The Commission decided [CB/6/112-114] that its earlier decision (and thus order) should stand.
40. On 29 June 2007, solicitors acting on behalf of the claimant wrote a letter before claim to the Charity Commission explaining that:

"On 4th May 2007 the Charity Commission made an Order to allow the Trustees of Alexandra Park and Palace, Charity number 281991, to enter into a lease of Alexandra Palace. That decision turned, in part, on the terms of the proposed lease. It followed a short period of consultation and took into account consultation responses. However, the decision was unlawful in that the proposed lease and related documents were not made available to consultees. Consultees were not, accordingly, able to make full and proper representations within the consultation process. Even now, only a redacted copy of the lease has been made public³. Had consultees, including Mr O'Callaghan, been provided with the lease they would have been able to make further material representations including as to whether the lease should be permitted at all and, even if was to be permitted, as to its terms." [CB/3/1-3]

41. Accordingly, not only did:

³ The reference there to a redacted copy of the lease being made available to the public was a reference to the fact that, as well as seeking a copy of the lease within the consultation process (as above) Mr O'Callaghan had also made a request for a copy of it under the Freedom of Information Act 2000. Following correspondence with the Charity Commission about that request including about the exemptions which might apply under that act, a heavily redacted copy of the lease (but no copy of the project agreement) had been provided to Mr O'Callaghan on That redacted document is at CB/7/117-166

- (1) consultees directly request site of the proposed lease and project agreement in the context of the consultation, and
- (2) make substantive comments arising from that concern in that process,

but also:

- (3) The Trustees recognised that the issue in play before the Charity Commission was not simply the overall question of principle of the making of the lease but also required detailed consideration of the terms of the proposed lease (and for that purpose chose selectively to quote from it in their comments to the Commission, as above); and
- (4) The Charity Commission in its deliberations and conclusion (properly) recognised that the wide issues and wide considerations before it and that, in dealing with those matters, it needed to give detailed consideration to the terms of the lease and project agreement (with the latter needing to be secured).

42. Nonetheless, in its reply of 18 July 2007 [CB/3/8-11] to the letter before claim, the Charity Commission rejected the contention that its consultation had been flawed. It explained that it was under no statutory duty to consult with interested parties (which is correct but not the issue, as above). It also proceeded on the basis that the claimant's argument was that the duty to consult arose from statements made by Fiona McTaggart, MP, as above, which, so the letter explained, did not include an undertaking to make the lease or other documents available to other consultees. Unfortunately, that too misses the point. In particular, as above, the legal issue is not tied to the basis on which the consultation arose: once consultation was being undertaken, it had to be undertaken on a proper basis. The letter went on to say this:

"[1] Further, the draft lease was provided by the Trustees to the Charity Commission on condition of confidentiality. The Charity Commission gave an undertaking to the Trustees that it would not publish the lease and it would be acting in breach of confidence if it did so. It is well established that confidentiality is a highly relevant consideration in determining the extent of a public authority's duty to consult: see, for example, **R (Bedford) v London Borough of Islington [2003] ENV LR 463** per Ouseley J at [102] and **R**

(Green) v Police Complaints Authority [2004] 1 WLR 725 per Lord Rodger at [73].

[2] In any event, the disclosure of a complex legal document such as the lease goes well beyond the usual reach of any duty to consult with interested parties in circumstances where a decision is being taken by a public body in the public interest. The terms of the lease are by their nature commercially sensitive. Were parties to such a lease to be required to disclose their terms to the general public, it would act as a significant deterrent to the conclusion of such agreements with commercial partners.

[3] Nor is disclosure of the lease required in order for your client to make meaningful representations on the proposals for the future of Alexandra Palace. An extensive public consultation has been undertaken on the proposed lessee's plans. This included a public display of the proposed lessee's proposals for the development of Alexandra Palace in the Palm Court during January 2006, on which members of the public were invited to comment. This display showed in some detail the nature of the lessee's proposed scheme. Over 240 responses were received from members of the public and interested parties.

[4] The nature of the proposed lessee's plans for Alexandra Palace was thus made publicly available and extensive consultation on those plans was undertaken by the Trustees. In these circumstances, a fair procedure cannot on any view have required that the lease be provided to the general public as part of the Charity Commission's exercise of seeking representations in relation to the Order.

[5] It is relevant in this context that the primary operative decision in this case was the decision of the Trustees to enter into the proposed lease. The Charity Commission's role was the limited and secondary one of checking whether the proposed lease was consistent with the purposes of the Alexandra Park and Palace Charity. As noted above, were it not for the limited undertaking given by Fiona McTaggart MP, there would have been no need for the Charity Commission to have considered representations at all." [numbering added]

43. Those are all bad points. Taking them in turn.
44. As for [1]: Although the Charity Commission refers to a condition of confidentiality being imposed upon it by the Trustees, it is notable that, as above, when responding to complaints about lack of provision of the lease, the Trustees made no mention of such matters and, in correspondence with the Commission, clearly

- contemplated the possibility that the lease might need to be made available to consultees.
45. Moreover, the authorities referred to are not authorities for the proposition identified and arose in wholly different contexts.
 46. Thus, for example, in Bedford, although there was a challenge to the failure to provide a lease and other financial information in the context of a consultation, that consultation was on a planning application in circumstances in which the contents of the lease referred to were not relevant to the planning issues in point, and (crucially) in which the materials in question had not been provided to the members of the planning committee who were making the planning decision. In sharp contrast here, the issue before the Charity Commission was precisely the lease and its terms and, as above, the Trustees made detailed reference to the provisions of the lease and the Charity Commission considered those representations and other aspects arising from the terms of the lease when reaching their decision.
 47. As for Green, the confidential material in question there was where witness statements which were not being provided in the context of a complaint against a police officer – a completely different factor and legal situation to that in play here.
 48. As for [2]: The suggestion that providing a copy of the lease would “go well beyond the usual reach of any duty to consult with interested parties” is completely unsubstantiated and wrong in any event.
 49. Moreover, the assertion that provision of such documentation would be a significant deterrent to the conclusion of commercial arrangements is wholly speculative and not the point.
 50. As for [3]: The claim that “nor is disclosure of the lease required in order for your client to make meaningful representations of the proposals for the future of Alexandra Palace” is simply wrong. The fact that the claimant and other made comments without the lease does not mean that the lease was not necessary for them to make full and proper comment, as indeed they said at the time (as above). As Mr O’Callaghan explains in his witness statement [CB/2/ paragraph 35], there were further issues that consultees would have been able to comment on in an informed way had they seen

the draft lease and project agreement; and (of course) they do not know what additional points might have arisen had they seen the documents which the Trustees chose to comment on in detail and which the Charity Commission considered in detail.

51. As for [4]: Likewise, the fact that the lessees' plans were in general terms made available to the public was not the point either. In particular, the issue in play before the Charity Commission was the lease, and turned on the detail of the lease, as above. The published plans, which were only in the most general terms, were no substitute.
52. As for [5]: The claim that the Charity Commissioner's role was limited to checking whether the proposed lease was consistent with the purpose of Alexandra Park and Palace Charity, is not correct.
53. In particular, the Charity Commission embarked on a consultation of a wide nature inviting comments on an unrestricted basis and on the basis that it would take into account all representations made.
54. Its appraisal of the issues was thus not limited in law, nor in fact, to checking whether the proposed lease was consistent with those purposes. See thus the conclusions it reached [CB/6/111]:

In conclusion the Commissioners were satisfied that the proposed lease falls within the scheme, that the decision is in furtherance of the objects and powers of the Charity, that the decision to enter into the proposed lease was properly taken by the board in the best interests of the Charity. The Commissioners' were satisfied that the decision to enter into the proposed lease by the board was in the interests of the Charity and provided an advantageous means of furthering its purposes, and consequently will be authorised under the Charities (Alexandra Palace Park and Palace) Order 2004 as being expedient in the interests of the Charity. The Commissioners decided that the order will make additional directions to the trustee to ensure the role of the statutory advisory committee in relation to the grant of the proposed lease and the management of the Charity is adhered to."
[underlining added]

55. In any event, even on the particular question of whether the proposed lease was consistent with the purposes of the Charity, consultees could and would have made comment had they been equipped with the lease and project agreement (which is intimately connected with the lease) themselves.

56. Accordingly, the reply to the letter before claim provides no answer to the challenge: the Order is unlawful because the failure of the consultation which preceded it and upon which it was founded.

Practicalities

57. In correspondence before the commencement of this claim, the Trustees have given an assurance that they will not enter into or complete the lease while these proceedings are ongoing.

The claimant has also, in correspondence, asked the other parties for their comments on the timing of the challenge and related matters. His letter and their replies are at [CB/3/1-20]. They show that, in the light of the assurance, the claimant has asked all parties whether they consider the application to be urgent. It appears that the Firoka group may apply for an expedited hearing but no party has asked us to apply for expedition. The claimant has indicated that he may apply as necessary for a protected costs order, but is not yet making that application while negotiations are continuing.

What the claimant seeks

58. The claimant thus seeks permission for judicial review of the Charity Commission's order of 4 May 2007.
59. At the substantive hearing of that judicial review application he will seek:
- (1) a declaration that the order was unlawful as above,
 - (2) an order quashing the order, and
 - (3) such further or other relief as the court considers appropriate.

David Wolfe
MATRIX
25 July 2007