

Claimant
Jacob O'Callaghan
First witness statement
Date: 26th July 2007
Exhibit: Claimant's Bundle

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) LTD

FIROKA (KINGS CROSS) LTD

THE ATTORNEY GENERAL

Interested Parties

WITNESS STATEMENT OF JACOB O'CALLAGHAN

I, Jacob O'Callaghan of 4A Bishopswood Road Highgate London N6 4NY, say as follows:

1. I am the claimant in this application. I have had a long association with Alexandra Park and Palace since 1990 as a writer, a resident of the area and voluntary worker for the Hornsey Historical Society, which I represented on the Alexandra Park and Palace's Statutory Advisory Committee (SAC) from 1992 to 2000. I have also been a trustee of the

Alexandra Palace Television Trust since 1994 and later became its secretary. I was a founder member of STEPP (Save the Environment of the Park and Palace) and of the Save Ally Pally campaign.

2. The facts stated below are either within my own knowledge and are true, or are based on information supplied to me, as indicated below, and I believe them to be true.
3. In this witness statement I refer to documents which are in the claimant's bundle with the reference [CB/tab number/ page number].
4. The "Save Ally Pally" Campaign is an unincorporated campaign which has among its objectives those of ensuring that any long lease of the Palace is for charitable purposes only, of safeguarding the original site of the world's first high-definition broadcasting and to preserve the outline of the original studios. It runs a web site, has a mailing list and discussion groups. It does not have a formal membership.
5. I think it would be helpful if I gave a brief history of Alexandra Palace and Park, knowledge of which is based on my research as a writer. The park was opened to the public in 1863 and the palace was built in 1873. They were based on ideas by Owen Jones, an architect for the Crystal Palace, and Lord Brougham, a former Lord Chancellor and campaigner for public education, for a "People's Palace" which was to provide "rational recreation" for the masses. In 1900 the Palace and Park's owner intended to sell it for commercial development, but it was purchased by a consortium of local authorities for the public. The Alexandra Park and Palace (Public Purposes) Act 1900 set up the trust with a duty to keep the Park and the Palace "available for the free use and recreation of the public for ever", and preserving the high-minded educational ideals of Jones and Brougham.
6. In 1935 Alexandra Palace was chosen, because of its elevation, for the site of both the studios and the transmitting aerial of the first high-definition regular public television service in the world, after the Selsdon Committee reported to Parliament. The south-eastern wing was converted to provide

two studios, dressing-rooms, a transmitter room, and offices, and an aerial was erected on top of the former water tower. The Palace thereby became a landmark in world cultural history, as important as Gutenberg's invention of moveable type. As Marshall McLuhan put it, the world after 1936 became a "global village".

7. Although the BBC gave up its lease in 1981, the studios and mast survived the fire and their configurations remain of enormous international interest and importance in terms of industrial, scientific and cultural archaeology. I believe they may well one day be listed as a World Heritage Site.
8. In 1966 the Ministry for Housing and Local Government made the Alexandra Park and Palace Order 1966. The effect of that Order was that the functions of the trustees were transferred to the Greater London Council. The order was challenged in the Courts and it was held that the 1966 Order was valid and that the 1900 Act imposed duties on the trustees which were wholly charitable.
9. In 1980 the GLC transferred the Palace and Park to Haringey Council and paid the council £8.5 million. Later in 1980 parts of the Palace were destroyed by fire and it was rebuilt under its insurance policy. The restoration went hugely over budget. However the eastern part including the BBC studios survived intact.
10. I attach a copy of a submission made by the BBC to English Heritage on 22nd January 2007 [CB/9/300 - 312]. This documents the important broadcasting history of Alexandra Palace. The letter [CB/9/313-315] reveals how important are the details of terms of the lease with Firoka to the concerns of those wishing to protect the original television studios at Alexandra Palace.
11. In 1996 STEPP was instrumental in making representations to the Attorney General which were a factor in his decision not to allow Haringey to claim an indemnity of £50million from the charity. Haringey for some years

refused to accept that they were not entitled to this and continued to wrongly charge interest to the charity funds on it.

12. During my time on the SAC I became concerned that the Trustees were sidelining the charitable, not-for-profit aspects of the Palace, and treating it as if it were a commercial private exhibition and conference centre. In particular they neglected the maintenance of the historic areas so that they, including Studio B, became severely damaged by water. They refused to provide funds for maintenance, saying that there were no funds, which I believe was untrue. They seemed unwilling to let the public into the building for other than commercial purposes.
13. Moreover, the Trustees seemed not to grasp that the building they had custody of was not like other council property. They did not seem to understand they were trustees of a building of London-wide, and in the case of the BBC studios, world-wide importance.
14. Therefore in 1998 I successfully applied for the Palace to be listed on the national list of buildings of special architectural or historic interest. This gave some protection. The trustees had opposed it.
15. I became familiar with the layout of the Studios and associated areas through events arranged there by the Alexandra Palace Television Trust of which I am a trustee and Secretary, and tours for the public conducted around the studios. These were always very popular.
16. In 2003, I again had fears about the proposed alterations to the statutes governing the charity by means of a s 17 Scheme. In particular I feared that it would enable the 1900 purposes to be altered and a for-profit, non-charitable, commercial lease to be authorized. In effect the Scheme would be a *cy-près* one — although there was no evidence justifying it. I had a meeting with Barbara Roche, our constituency MP. She wrote to the relevant Departments. They responded with assurances about the effect of the Scheme and any Order granted by means of it. In addition, with Councillor Dr Hare, a trustee of the charity, I provided background

historical and local information, and information about the true financial position of the charity, to Simon Hughes MP and Don Foster MP, who together with other MPs put down an EDM calling for the Order for the section 17 Scheme not to be made.

17. This led to the debate in Parliament where my specific concerns were expressed by MPs. I was present during the debate. The responsible minister, Fiona Mactaggart made promises about consultation. The Hansard record of the debate appears at CB/8/279-294. Fiona Mactaggart said this:

The scheme does not amend the charity's purposes. The trustees have a legal responsibility to ensure that those purposes are achieved, and the charity commissioners, as the regulatory body, will hold them to that. The scheme does not provide for the palace to be sold for commercial development; it provides the power to lease it and the immediate surrounding area for 125 years.

....

The details of a lease would have to be agreed with the Charity Commission, thus providing another stop to ensure that the beneficial interests will be protected. Those details would include the use, the rent premium, the role of the advisory committee, power of assignment, what happens in case of the insolvency of the lessee, any changes of use and so on.....

...

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.

18. The Order was made on January 2004 and appears at CB/ 4/ 21-24.
19. During 2005-2006 it became public knowledge that moves were afoot by the trustees to apply for an Order to authorize a long lease of the whole building on the basis of the 2004 Order. The trustees held a competition for a developer. The usual procedure in the case of historic listed buildings, in my experience, is that, prior to such competition, the owners commission a detailed Conservation Brief.
20. This would include an historical survey of the building and set out in detail for the developer what is to be acceptable use for the building, what changes may be made, and what areas are sacrosanct. Unfortunately, in this case no Conservation Brief was ever commissioned. This made seeing the details of the eventual lease and project agreement essential.
21. Three developers including Firoka were chosen for the short list. A display panel was put up in the Palace for a week by Firoka exhibiting some proposed uses including a casino. Firoka was selected as preferred developer. From the display and such public statements as its principal Mr Kassam had made it was apparent he was not going to regard the TV studios site as sacrosanct and in fact was going to demolish them for other uses. The General Committee of the Hornsey Historical Society were concerned by this as were many others. I

expressed concerns about this to Dr Hare who was a trustee and I understand he strongly argued them during the further negotiations, but Firoka's negotiators were refusing to alter the lease. I hoped that the eventual lease and enabling works might respect the huge historic interest of the eastern part of the Palace, above all the site of the TV studios, by leaving the physical outlines intact, but feared they might not.

22. I saw what I mistakenly believed was a part of the lease. I recommended to the General Committee of HHS that I consult with David Frith, a retired Haringey Borough Planning Officer, now also member of the SAC on behalf of another Association, also a member of the General Committee, and that we should agree a letter to the Commission. David Frith stressed the importance of including the point about the importance of our seeing the full lease documentation and I agreed.
23. Accordingly on 3rd November 2006 I wrote to the Charity Commission on behalf of the Hornsey Historical Society, as conservation officer. I wrote in the context of the trustee's consultation and in response to what I thought was part of a draft lease. In fact I now know I had not seen the draft lease. A copy of the letter appears at CB/5/33.
24. On November 2006 the Charity Commission published a draft Order and a question and answer sheet. I noted that there were incorrect statements in the information given in the Answers. In particular the uses of the building were misdescribed, and statements were again made about the finances of the charity which I believed from my researches, from being a member of the SAC and from correspondence between the Council and the Treasury Solicitor to be untrue. Copies of these documents appear at CB/5/ 25-29.
25. I did not really consider the period of consultation was long enough for a decision which was of interest to many people and organizations both nationally and internationally.

26. I drew attention to the consultation in statements I made in an article published in the Independent on December 2006. A copy of this appears at CB/ 9/ 299 .
27. On 4th January 2007 I submitted a response to the consultation on behalf of the Hornsey Historical Society. A copy of that letter, which incorporate the letter of 3rd November, appears at CB/ 5/ 33. My comments included that:
- 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.
28. I was not the only consultee to make the point about lack of information. For example, Mr Thompson QC sent me a copy of his submission which appears at CB/5/39-40. Also Clive Carter wrote during the consultation to ask the Commission for a copy of the lease. A copy of his letter appears at CB/9/ 316 – 321.
29. The Charity Commission wrote to all consultees in May to inform them that the decision to make the Order had been made and that the decision would be available in due course. They also informed consultees that they had 3 months from the date of the decision within which to apply for judicial review. A copy of that letter appears at CB/6/115.
30. I received a copy of the decision much later. A copy is at CB/6/104.
31. On 16th February 2007 the Charity Commission sent me a redacted copy of the proposed lease, a copy of which is at CB/7/117 - 166. I have not received any other documents, which are as important to consideration of the Order, such as the project agreement.

32. On 7th March 2007 the Charity Commission sent me copies of correspondence between the Charity Commission and the trustee's solicitor. Copies of that correspondence are at CB/7/167-278. From the correspondence I note that:

- a) On 5th April 2006 Victoria Crandon, for the Commission, e-mailed the trustees to say that "An undertaking was given by Fiona MacTaggart that it will be possible to raise concerns with the Commission in connection with the granting of this lease." [CB/7/183]
- b) On 15th March Victoria Crandon said that "A copy of the lease will be needed before the order can be fully considered" [CB/7/176]
- c) On 22nd November Victoria Crandon wrote to the trustees to say that "I am writing to confirm that following our extensive correspondence we are willing to authorise the disposal of the palace and its surround to Firoka" [CB/7/253]. This decision was made before the Charity Commission started its consultation.

33. Haringey Council published documents including the Charity Commission's analysis of the consultation responses on 14th February 2007. A copy of the analysis appears on CB/ 5/46.

34. I asked the Charity Commission to review its decision and it did so on A copy of that review appears on CB/ 6 / 112.

35. Had I been able to see the lease, the project agreement and the plans which are referred to in the Order the issues I would have needed and been able to comment on, especially in the context of the lack of a prior Conservation Brief, would have included:

- a) the exact areas which it was proposed should be leased
- b) the effect on the other areas owned by the trustees, such as the park
- c) the areas which would remain for not-for-profit public access
- d) For how many days in each year the lessee may close parts of the palace to the public except on payment of a fee
- e) Details of the works specified to be carried out under the lease and project or building agreement and the changes to the building proposed

- f) the provisions in the master agreement for non performance of restoration work, contravention of the lease and building agreement
- g) car parking facilities in the non demised areas
- h) rights of the lessee over the park grounds
- i) provision for obtaining planning consents including listed building consents and changes of use including the timetable for this and what would happen should they be refused
- j) in general, whether the proposed lease, project agreement and associated plans and documents and the proposed uses, really were consistent with the public purposes for the Palace set out in the Act, and clarified in the 1967 High Court judgment, and which Fiona Mactaggart had expressly promised would be unaffected by the lease; and with the public benefit requirement of the Charities Act 2006. If necessary I would have obtained legal advice on this matter and submitted it to the Commission or the Court for consideration because in any event I intended to seek a declaration from the Court as to the various issues including the true position of the charity's financial position and its indebtedness if any to the Council
- k) in particular the provision for the south east wing, site of the BBC television station, and whether there was provision for letting or subletting at low or no rent for the purpose of a television museum
- l) any provision for charitable organisations to occupy part of the Palace at low or no rent.

36. I believe that others could have made representations if they had had copies of the lease and related documents. I refer, for example, to the submission from BBC Heritage. The letter [CB/9/313-315] reveals how important are the terms of the lease with Firoka to the concerns of those wishing to protect the original television studios at Alexandra Palace. The BBC have told me in recent meetings that they remain willing to provide exhibits and technical and financial encouragement and support for the establishment of a museum within the original studios, which themselves would be part of the interest to visitors.

I believe that the facts stated in this statement are true.

Signed.....*Paul O Callahan*
Dated.....*26th July 2007*.