

To: Kenneth Dibble (for Commissioner Review)
cc: David Locke
James Kilby
Neil Robertson
Andrew Wherrett
Harvey Grenville

Date: 2nd March 2007

For Decision

Title: **DECISION REVIEW: ALEXANDRA PALACE**

Issue: Decision on whether to make an Order to authorise the disposal of Alexandra Palace by lease to a Development Company (Firoka) following a public notice exercise.

Recommended action:

That the Commissioner reviewing the decision decides:

- (a) if a decision can be made now, or if additional information is required;
- (b) whether the Commission should make the Order on the terms proposed.

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A BACKGROUND

A.1 Alexandra Palace

Alexandra Park and Palace is presently used as an exhibition centre, including an ice rink and bar and is set in 196 acres of grounds in the London Borough of Haringey. The charity is governed by a number of Acts of Parliament and the Commission's Order of 2004. The trustee, Haringey Council, has provided evidence that for many years, the charity has operated at a substantial loss, which the Council has met out of public funds. The Council, as local authority, is not willing to continue to subsidise this loss and there are also unresolved questions over their power to do so. The trustee has looked into various options for the way forward for the charity and, after public consultation and a tender process, has decided to lease Alexandra Palace and its immediate hard standing surround to Firoka (a development company).

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 that it might make authorising a lease and to invite and consider any representations that it may receive.

A.2 The 2004 Order and Parliamentary Debate

The Alexandra Park and Palace Acts and Order 1900-2004 (the Acts) provided at Annex A, do not go so far as to specify a charitable purpose which the trustee is obliged to pursue in the way that a modern trust deed might. However, based on the Acts as they stood in 1967, the High Court concluded that the Alexandra Park and Palace Act 1900 established a trust for exclusively charitable purposes. Its provisions from which the Court derived its objects are set out in sections 17 and 26. The Court concluded that the *'park and palace can be employed in accordance with the purposes specified in section 17 for the recreation of the public.'* A copy of the judgement of Pennycuik J is attached at Annex B.

Our register summarises the charitable purposes *'To hold and manage Alexandra Palace and Park as a place of public recreation and for other public purposes'* although with reference to the 1967 judgement of the High Court, this is not a definitive statement of the objects.

Prior to making the 2004 scheme, the matter was considered by the Standing Committee on Delegated Legislation. An extract from the Hansard report is attached at Annex C. A number of representations were made by the presenting minister on behalf of the Commission.

The minister commented at column 20 that the Scheme does not permit the palace to be sold for development and that the Scheme does not amend the charity's purposes. There may be some tension between this representation and our interpretation of the Scheme as permitting a development lease so the physical palace will be used for commercial purposes but its rent for charitable purposes.

In the second complete paragraph of column 20, the minister represents the sorts of considerations which will be addressed in deciding whether to make the Order. The lease contains provisions relating to all the topics covered except change of use and the role of the advisory committee. Change of use is not contemplated by the lease and so does not arise. The advisory committee has a role set out in the Alexandra Park and Palace Act 1985, schedule 2. Its role is advisory to the trustee, not a commercial tenant and it was not considered appropriate to suggest a role for the advisory committee in the lease. Our draft Order however gives directions relating to the trustee's review of the developer's compliance with the obligations under the lease. These are intended to publicly record the trustee's obligations in this regard and to encourage the participation of the advisory committee in that process.

At column 21, the minister conveyed the Commission's undertaking to publish a draft of any Order permitting a specific lease for the purposes of taking representations and considering them.

A.3 The proposal to dispose of the property

The trustee made a case to the Commission to demonstrate that the disposal was in the best interests of the charity. We agreed to authorise the transaction by Order under section 26 of the Charities Act 1993 and The Charities (Alexandra Park and Palace) Order, subject to the analysis of representations made following a period of public notice.

The lease (at annex D) is within the powers provided in the 2004 Order. The ancillary uses may only be implemented if they are consistent with the purposes of the Alexandra Park Acts. The trustee has concluded that the 125 year lease is for the best rent reasonably obtainable as required by the Scheme of 2004. The lease proposed is one authorised by the Scheme of 2004.

The 2004 Scheme made by statutory instrument under section 17 of the Charities Act 1993 makes two key provisos in respect of the terms of the lease to be made under it. Taking them in the order in which they are easiest to understand rather than the order in which they appear:

First the use permitted by the lease must not be inconsistent with the purposes of the charity contained in the Acts;

Second, the rent must be the best that is reasonably obtainable regard being had to the purpose of the Acts.

The Scheme provided that any question as to the construction of the Scheme or as to the regularity of acts about to be done under the Scheme may be determined by the Commission.

It was considered that the 2004 Scheme permitted a lease:

- to a person who would commercially exploit the premises;
- that the user of the premises must be restricted to uses to which the premises might otherwise have been put by the trustee in the different context of pursuing the objects;
- that the use of the premises must be consistent with the use of the park remaining in the trustee's possession in furtherance of the objects by the trustee; and
- that the rent must be the best rent reasonably obtainable and consistent with the commercial exploitation of the premises, but revised to take account of the limited uses to which the premises may be put.

In considering whether the lease met these requirements, the user provisions, nuisance provisions and rent provisions were particularly important.

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 a use which is inconsistent with the Acts is not permitted. The user clause has been amended to ensure the precedence of that requirement was clear.

Clause 3.12 provides the trustees with some rights which can be used to protect the use of the remaining park. These rights enable the trustees to prevent use of the premises not in accordance with the provisions of the Acts.

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 their 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 Acts. Please see annex E in this regard.

B ANALYSIS

B.1 The public notice process

Public notice was given for a period of 5 weeks, which ended on 5th January 2007. Publication was in The Times newspaper and 6 local London papers. Notices were also placed in the Park and Palace and in local libraries. We produced a Q&A sheet to explain the proposals. 328 representations were received: 4 were clearly in favour and 324 expressed at least some concern.

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.

B.2 Analysis of representations

The Summary of Representations is attached at annex F.

B.3 Further information supplied

The trustee has had sight of the Summary of Representations paper which was discussed at their trustee meeting on 20th January 2007. When sending this paper to the trustee we asked them to consider specifically 4 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; and
- The proposals for monitoring the covenants in the lease.

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

The trustee has considered in detail the representations. They have provided detailed comment on the representations. They do not feel that the representations provide any new evidence for the trustee to take any 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 II 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.

B.4 The decision making process

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 Schemes doesn't apply. As this is a draft Order, the decision review procedure doesn't apply either. As we

have undertaken 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 the representations by a Commissioner will obviate any further review.

B.5 Risk assessment

<i>Risk</i>	<i>Likelihood</i>	<i>Impact</i>	<i>Mitigation</i>
Reputational risk	Medium	<p>1 Loss of confidence in the Commission as an effective regulator.</p> <p>2 The Commission is seen to favour a larger charity (AP) over a smaller charity (CUFOS).</p>	<p>1 We have gone through a public notice exercise and independent review process.</p> <p>2 We have indications that our actions have led to a change in approach to CUFOS in the proposals.</p>
Managing expectations	Medium	We could become involved in correspondence on matters outside our remit.	We have invoked a clear representations process.
Risk of developer pulling out	Medium	Impact on the future for the charity.	This case has been treated as a priority case (ie outside the normal service delivery protocols).

B.6 Communication/Handling issues

Our communication strategy to the charity will involve informing the trustee of the outcome of the review and reasoning behind this.

A database has been constructed of all those who have provided representations or otherwise expressed an interest in this matter. We will write to each of these people with the outcome of the review and reasoning.

There has been local and national press interest on this case. We will liaise with the Press Office over an agreed press line.

C CONCLUSION

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.

Memorandum

To: Commissioners (Members of the Commission) **cc:** Andrew Hind
From: Kenneth Dibble **Room:** 5th Floor Nick Allaway
Tel: London 2375 **Fax:** 2308 Rosie Chapman
Date: 6 March 2007 Simon Carney

Subject: Alexandra Park and Palace (reg. no. 281991)

Delegation to nominated Commissioners (Members) to decide whether to make an Order to authorise the granting of a long lease of Alexandra Palace.

Issue:

The delegation to nominated Commissioners of the decision whether to make an Order to authorise the granting of a long lease of Alexandra Palace and its immediate hardstanding surround to a Development Company following a public notice exercise.

Recommendation:

That you, as members of the Commission, delegate the carrying out of the decision to nominate Lindsay Driscoll and John Williams with full powers to make the decision on behalf of the Commission.

Timing:

Urgent and critical. The Development Company wishes for a response before 15th March. They are concerned about the financial impact of any delay. It is unclear how long the Development Company will wait for the outcome of our decision, with one of the risks being that they will pull out.

Background:

Alexandra Park and Palace has operated at a substantial loss for many years. Haringey Council, as trustee, has subsidised that loss. It is not willing to continue to do this. The trustee has looked into various options over a lengthy period of time and has decided to lease the Palace and its immediate hard standing surround to Firoka (a development company). The lease requires the Commission's consent (under The Charities (Alexandra Park and Palace) Order 2004 and section 26 of the Charities Act 1993).

During a Parliamentary debate on the 2004 Order, Fiona McTaggart MP announced that she had received an undertaking from the Commission to publish the draft of any Order that it might make authorising a lease and to invite and consider any representations that it may receive. We published a draft Order in December 2006. The period for making representations expired on 5th January 2006. We received a total of 328 representations.

Issues:

The lease appears to be within the powers provided by the 2004 Order. The trustee has made a case to show that the disposal is in the best interests of the charity. An analysis has been completed of the representations and the trustee has had the opportunity to comment on these representations. We now need to decide if we are in a position to seal the Order.

Four main issues came out of the representation process. The trustee has considered these in detail and provided a lengthy response. Following the concerns raised in the representations, the trustee has agreed to vary the terms of the lease of part of Alexandra Palace, which it leases to a community centre charity, so that they have some security of tenure once their present lease expires.

Please see the minute from Victoria Crandon to me dated 2nd March 2007, which is attached for a detailed analysis of the issues.

The Decision Making Process:

We are making the Order under the power given in the Parliamentary scheme and under section 26 of the 1993 Act. Strictly speaking, the procedure laid down in OG1 for considering representations about Schemes do not apply. As this is a draft Order, the decision review procedure do not apply either.

As we have undertaken to consider representations, the case is analogous to the making of a section 16 Scheme and in the absence of any published or settled 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 the representations by a Commissioner will obviate any further review. Escalation to Commissioner level of this high risk case is fully in line with the Governance arrangements.

In view of the complexity, the high public profile of the organisation, MP interest and potential public repercussions, I propose that the decision be 'fast-tracked' to the Commissioners for consideration.

Delegation to Nominated Commissioners:

Since the implementation of the Charities Act 2006 (in part) and the constitution of the Commission as a corporate body, there is no longer an express statutory power for the Chair (formerly the Chief Commissioner) to act on behalf of the Commission in delegating matters to individual Commissioners. Pending the adaptation of standing orders on this point, it is preferable that all the members are approached for authority to delegate this matter to two Commissioners. You have the power to delegate such a decision under Paragraph 8 (a) of Schedule 1 of the Charities Act 2006. My recommendation is that you delegate this review to Lindsay Driscoll and John Williams with full power to determine the matter on behalf of the Commission. This is an assumption that none of those nominated have a sufficient conflict of interest which would inhibit them from so acting in this capacity.

It has been flagged by the charity's solicitor that David Unwin has previously dealt with this matter, before he came to the Commission, and as such a conflict of interest may arise. David may also feel that he should recuse himself from this decision also.

Kenneth Dibble
Executive Director, Legal and Charity Services

CHARITY COMMISSION
ALEXANDRA PARK AND PALACE

DECISION TO AUTHORISE THE GRANT OF A LEASE OVER THE PALACE AND
SURROUNDING LAND UNDER THE ALEXANDRA PARK AND PALACE ORDER
2004

DECISION OF THE COMMISSION MADE 27 April 2007

1 *The issue before the Commission*

1.1

Whether to authorise the grant of a lease for 125 years over the Palace and its immediate surrounding land under clause 3 of the Scheme established under the Alexandra Park and Palace Order 2004.

1.2

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.

2 *Decision of the Commission*

2.1

Having considered the representations and reviewed the basis for authorising the lease, the Commission has determined that the lease should be authorised.

2.2

This decision to authorise the lease on behalf of the Commission was taken by Lindsay Driscoll and John Williams, Members of the Commission's Board and Commissioners (the Commissioners) under delegated authority.

3 *Background*

3.1 *Alexandra Park and Palace*

Alexandra Park and Palace (the Charity) is governed by the Alexandra Park and Palace Act 1900, the Alexandra Park and Palace (Public Purposes) Act 1913, The Alexandra Park and Palace Order 1966 and the Alexandra Park and Palace Act 1985, and the Charities (Alexandra Park and Palace) Order 2004 (collectively known as the Alexandra Park and Palace Acts and Orders). The Park and Palace are held on charitable trust to be used as a place of public resort and recreation and for other public purposes (the purpose of Alexandra Park and Palace Acts and Orders).

The trustee of the Charity is the Council of the London Borough of Haringey (the Trustee) which has formally delegated the fulfilment of the functions, powers and duties of the Council as trustee of Alexandra Palace and Park under the Alexandra Park and Palace Acts and Order 1900 to 2004 to a committee known as the Alexandra Park and Palace Board (the Board).

3.2 The Alexandra Park and Palace Order 2004

The Alexandra Park and Palace Order 2004 (the 2004 Order) was made on 27 January 2004 and came into force on 10 February 2004. The Order brought into effect a scheme (the Scheme) which is set out in an Appendix to the Order.

Clause 3 of the Scheme provides as follows –

Power to lease. The Trustees may, subject to the consent by Order of the Charity Commissioners, grant a lease of the whole or part or parts of the Palace buildings and the immediate surrounding area (which for the purpose of identification only is shown coloured red on the plan deposited with the Charity Commissioners under number 46278) for a term not exceeding 125 years at the best rent reasonably obtainable regard being had to the purpose of the Alexandra Park and Palace Acts and Order 1900 to 1985, provided that the Trustees may not grant any such lease which permits a use otherwise than is consistent with the said purposes.

3.3 The proposed Order, publication and consultation

The Board formed the view that the purposes of the Charity could be more effectively carried out if the Palace premises could be developed for recreational and other use consistent with the purposes of the charity. This would also ensure the financial viability of the Charity which had been subject to a revenue deficit for a number of years. Following professional advice, the Board carried out a marketing exercise seeking bidders for development of the Palace and immediate surrounding land under a long lease. The Board, having received expressions of interest, invited submissions from preferred bidders and, against established criteria, selected a preferred developer and lessee.

Having negotiated terms for the letting of the whole of the area subject to Clause 3 of the Scheme to a developer, the Board requested an order of the Commission to allow it to grant a lease (the proposed lease) pursuant to Clause 3 of the Scheme. When the 2004 Order was subject to Parliamentary scrutiny, the Commission had agreed that any order authorizing a lease would be subject to public consultation given public concerns which had arisen. Accordingly, once the Commission considered the case put by the Board and decided that the order should be made authorizing the lease, it published the proposed order and sought the views of the public.

Where legislation requires the Commission to publish a draft order, the period for the public to make representations is not less than one month. A similar procedure was put in place for this voluntary publication although a period of five weeks, to take account of intervening public holidays, was selected for the public to make representations. The draft order was published on 28 November 2006 in the Times newspaper, six local London newspapers and on notice boards at the Palace and Park. The public consultation period closed on 5 January 2007 although in practice, representations received after this date were also given consideration.

In all, 328 representations together with a petition signed in 2004 were received and considered by the Commission.

4 Framework for the issues considered

4.1

The Commissioners considered that in reaching their determination, as to whether to authorize the Trustee to enter into the proposed lease, they needed to consider whether, firstly, the proposed lease was within the power to let as prescribed by Clause 3 of the Scheme and, secondly, whether the grant of the proposed lease could be authorized as being expedient in the interests of the charity, taking into account the representations which had been received. The Commissioners dealt with each issue in turn.

4.2 Is the proposed lease within the power conferred by the Scheme?

4.2.1 The Commissioners noted the provisions of Clause 3 of the Scheme as set out in paragraph 3.2 above. The Commissioners noted the following provisions of the proposed lease:

- the area to be let in the proposed lease covers the Palace buildings and the immediate surrounding areas, all of which fall within the area delineated in the plan and deposited with the Commissioners at the time of the Scheme.
- the term specified in the proposed lease is 125 years and is therefore the maximum term permitted in the 2004 Scheme.
- the proposed lease makes provision for rent and other financial payments to be made by the tenant to the Charity. The obligations described as rent in the proposed lease are certain obligations of a periodical nature which would properly be described as rent under common law or under the definition in section 205 of the Law of Property Act 1925¹.

4.2.2 The Commissioners noted that surveyors acting exclusively for the Charity have advised the Board that the terms of the proposed lease agreed represent the best disposition available to the Charity, and that they confirmed that the rent provisions represented the best rent reasonably obtainable, regard being had to the purpose of the Alexandra Park and Palace Acts and Orders. The Commissioners noted that they had no reason to question that view, particularly given that the proposed tenant was selected from thirteen expressions of interest in a lease of the Palace following a marketing campaign specially devised for the Palace by the Charity's professional advisers.

The Commissioners noted that given the limited use to which the building could be put given its state of repair, any tenant would need to make a substantial capital investment.

4.2.3 The Commissioners further noted that the final requirement in Clause 3 of the Scheme is that the use permitted by the lease must be consistent with the purposes of the Alexandra Park and Palace Acts and Orders. They noted that the use which the tenant is permitted to make of the Palace is restricted in the proposed lease, being expressly restricted to "uses of the Premises consistent with the purposes of the Alexandra Park Acts". They noted that the proposed lease also describes ancillary uses, but makes it clear that these, "for the avoidance of doubt must be consistent with the purposes of the Alexandra Park Acts".

¹ See for example Woodfall 7.0001-7.0026

The Commissioners also noted that the purposes of the Charity, as derived from the Alexandra Park and Palace Acts and Orders, are that the Park and Palace are to be used as a place of public resort and recreation and for other public purposes. The Commissioners considered that the primary uses and ancillary uses described in the proposed lease were consistent with those purposes. They are *either* uses to which the Trustee might itself have put the Palace in order to promote the free use and recreation of the public *or* they are uses to which the Trustee might have permitted others to put the Palace under other powers conferred under the Alexandra Park and Palace Orders.

4.2.4 The Commissioners further noted that the Scheme contemplates that the Palace will be developed and let on a commercial basis by a developer, paying to the Charity the best rent reasonably obtainable given the required use. However the Commissioners considered that the Scheme only permits the developer to make use of the Palace in a way which the Trustee could have done in pursuit of its charitable purposes. It only permits a use under any lease which is consistent with the management of the Park and Palace as a whole by the Trustee as a place of free use and recreation of the public. The Commissioners concluded that a commercial development lease was contemplated by the power to let in the Scheme and that the use permitted by the proposed lease is consistent with the purposes of the Charity.

4.2.5 The Commissioners concluded that the proposed lease fell within the power to let conferred by the Scheme.

5 Is granting the proposed lease expedient in the interests of the Charity?

5.1

The Commissioners noted that the Scheme required the consent of the Commission to the proposed lease to be provided by way of an order and that the Commission's authority to make the order derived from the Scheme. The Commissioners considered that it was implicit in the power to make an order under the Scheme that the order should only be made if the grant of the lease in question was expedient in the interests of the Charity². The Commissioners also considered that it was implicit in the power to make the order that where it was expedient to do so, the Commission could include incidental and supplementary provisions.

The Commissioners noted that in assessing whether a course of action is expedient in the interests of the Charity, the Commission is not able to substitute its decision for that of the Trustee. Section 1E of the Charities Act 1993 specifically prohibits the Commission from acting in the administration of a charity. Rather, it is for the Commission to consider whether the Trustee had made the decision in furtherance of its objects and powers, the decision was properly taken and that it was taken in the best interests of the Charity.

Finally, the Commission would need to be satisfied that the decision was in the interests of the Charity and provided an advantageous means of furthering its purposes.

5.2

The Commissioners considered the information provided by the Board on behalf of the Trustee about the decision it had taken and the criteria described above for determining whether the proposed lease was expedient in the interests of the Charity.

² See by way of analogy the Commission's power to authorise dealing in charity property conferred by Section 26 of the Charities Act 1993

5.2.1 The Commissioners first considered whether the decision was properly taken by the Board in the best interests of the Charity. In particular they considered that the responsibilities of the trustees in making such a decision were as follows:

- To act within the powers conferred upon them and the established rules and procedures for dealing with issues of the kind under consideration³.
- To act in good faith⁴
- To adequately inform themselves in order to make the decision in question⁵
- Not to take into consideration any factors which it was not proper for them to take into account⁶
- To consider any factors which they should take into account⁷
- To act reasonably (i.e. the decision should be within the range of decisions which a reasonable body of trustees could have made)⁸

5.2.2 The Commissioners concluded that the decision had been properly taken in the best interests of the charity after consideration of the following factors:

5.2.3 Whether the proposed lease was within the terms of the power conferred by the Scheme.

The decision had been taken by the Board to whom fulfilment of the functions, powers and duties of the Council as trustee had been delegated. The decision was therefore taken within the rules and procedures established for taking decisions in connection with the management of the Charity.

5.2.4 Whether the Trustee had acted in good faith.

As the Charity has been supported for many years by loans from Haringey London Borough Council (Haringey) (the total owing to Haringey has previously been the subject of some dispute), there were inevitably some conflicts of interests between the Council in its capacity as Trustee of the Charity and the Council in its capacity as a local authority. It was also recognised that the Charity and Haringey shared a common interest in arrangements which improve the financial position of the Charity. In the Commissioners' view, the delegation of the Trustee's functions and the

³ *re Hastings-Bass dec'd* (C.A) [1975] Ch 25

⁴ *re Hastings-Bass (supra)*; *Armitage v Nurse* [1997] 2 All ER 705

⁵ *R v Charity Commissioners ex parte Baldwin* (2001) 33 HLR 48, QBD; *Scott v National Trust (supra)*

⁶ *Mettoy Pension Trustees v Evans* (Ch.D.) [1990] 1 WLR 1587; *Dundee General Hospitals Board of Management v Walker and another* [1952] 1 All ER 680

⁷ *Mettoy Pension Trustees v Evans supra*; *Dundee General Hospitals Board of Management v Walker and another supra*

⁸ *Lee v Showmen's Guild of Great Britain* [1952] 1 All ER 1175; *Scott v National Trust* [1998] 2 All ER 705

provision of independent advice on trust matters to the Board provided some insulation from the conflict.

An issue about the extent to which Haringey was under a legal obligation to maintain the land and premises owned by the Charity, had also been subject to some dispute which remained unresolved. There was also an issue about the extent to which the financial circumstances of the Charity had been properly represented to the Commission by the Trustee. That issue related to the indebtedness which the Charity owed to Haringey arising from the latter's subsidy over a number of years. This had been subject to a dispute between Haringey and the Trustee which had been resolved by the Treasury Solicitor. The extent and degree of this debt was now being challenged.

The Commissioners noted that both of these issues pre-dated the establishment of the 2004 Order and that these matters had been known at the time when the 2004 Order was before Parliament. The Commissioners concluded that both the Trustee and the Commission were entitled to rely on the provisions of the 2004 Order as a basis for granting and authorising a lease in accordance with its terms.

Consequently the Commissioners were satisfied that the Trustee in relation to this matter had acted in good faith.

5.2.5 Whether the Trustee had properly informed himself in relation to the decision.

The test to be applied by the courts is not one of the trustees having complete information forming the basis of a full analysis and discussion⁹, but instead is of a lower level, which the Commissioners felt had been discharged in this case. In particular, the Board had sought appropriate professional advice in order to inform itself on matters in which it was not expert. Following professional advice, the Board had adopted a marketing strategy designed to gather information about the interest in the market for taking a lease of the Palace in order to select a preferred bidder. Of 13 indications of interest following marketing, the Board invited detailed proposals from three of the respondents. Two of those produced proposals which the Board assessed against criteria it had established to reflect the interests of the Charity. Having selected a preferred bidder, the Board took professional advice relating to the relative advantages of the proposed lease to the Charity and relating to the legal framework through which risks would be managed.

5.2.6 Whether the Trustee had taken into account irrelevant factors.

There was no evidence that the Board had taken into consideration any factors it was not proper for them to take into consideration. As noted above, there were inevitably some conflicts of interest between the Trustee and Haringey and some aspects of the relationship had been in dispute and others remained unresolved. However, the delegation of the functions of the Trustee to the Board and the provision of independent advice on trust matters to the Board provided some insulation from the conflict.

5.2.7 The Commissioners considered that the Board had considered factors which it should take into account. In addition to professional advice on trust matters, valuation and marketing of the Palace and the terms of the arrangements with the proposed tenant, the Board confirmed that a range of alternatives to letting the Palace for development had been considered

⁹ In *Scott v National Trust*, the judge recognised that complete information and full analysis is not the appropriate standard and that "too stringent a test may impose intolerable burdens"

5.2.8 The Commissioners considered the case made by the Board, the proposed lease, the draft project agreement to accompany the proposed lease, the Alexandra Park and Palace Acts and Orders and the representations, which appear below (particularly those relating to the sufficiency of the lease). The Commissioners noted that the lease would provide the Charity with the prospect of receiving some payments by way of rent and premium and that given the state of repair of the Palace, any tenant would need to make a substantial capital investment. The Commissioners concluded that the Board's decision to grant the proposed lease to the developer on the terms agreed appeared to be within the range of options which a reasonable trustee might be expected to make.

5.2.9 On considering the case made by the Board, the proposed lease and project agreement, the Alexandra Park and Palace Acts and Orders and the representations, the Commissioners were also satisfied that granting the proposed lease was in the interests of the Charity and provided an advantageous means of furthering its purposes. Consequently, and subject to the consideration of the representations, the Commissioners considered that the grant of the proposed lease would be expedient in the interests of the charity.

5.3 Consideration of representations

The Commissioners then went on to consider the representations which had been received on giving public notice of the Commission's intention to confer the authority to enter into the proposed lease. The Commissioners also considered the representations which were made at a meeting held at the Commission on 2 April 2007 and attended by members of the Board which they had not already previously considered. Although the Commissioners noted that each of the 328 representations received and considered was unique, there were clear trends in the concerns of correspondents. These concerns had been raised with the Trustee to see whether it would be possible to deal with the concerns consistently with the Charity's interests. The Commissioners considered each of the potential areas for concern raised in the representations which are set down below.

- *That the Park and Palace should continue to be used as a place of public resort and recreation open to the public and that the grant of a development lease is not consistent with the purposes and charitable status of Alexandra Park and Palace.*

The 2004 Order bringing into effect the Scheme, by way of clause 3 clearly provided that the Trustee may grant a lease of the whole or part or parts of the Palace buildings and the immediate surrounding area for a term not exceeding 125 years, at the best rent obtainable, regard being had to the purpose of Alexandra Park and Palace Acts and Orders and being consistent with those purposes. In the Commissioners' view, this clearly contemplated a lease being granted on commercial terms, and that a development lease, that otherwise fulfilled the criteria, fell within its scope. Further, in their view, the proposed lease did not change the overall purposes on which the land and premises of the Charity were held, and nor did it threaten the charitable status of Alexandra Park and Palace.

- *CUFOS building.*
CUFOS is a community centre charity which uses the old station building at Alexandra Palace. It has a lease of the old station building which expires in 2011. The old station building is part of the built on area in the immediate surrounding area of the Palace which the Trustee wishes to let to the

developer. Although the developer would be obliged to honour the existing lease, there were concerns that the developer might not renew that lease in 2011.

In discussing the concerns with the Trustee, the Commission accepted that if the CUFOS building were not let to the developer, the Trustee would have to consider whether and on what terms to renew the CUFOS lease in 2011. However, the Trustee was able to agree with the developer and undertake to the Commission that the CUFOS lease should be given statutory protection under the Landlord and Tenant Act 1954. This will provide CUFOS with greater rights to continue occupying the old station at the end of their lease than is currently the case.

- *Retention of original TV studios.*
Representations on this matter covered the desirability of retaining the original studios, providing public access to them and the creation of a television museum. The Trustee's response pointed out that the developer's concept included a television museum. In recognition of the importance attached to that, the project agreement requires the developer to try for a period of three years, to let space for a television museum to a museum operator. The response also explained that the location of the actual studios made public access or any promise of public access impracticable.

With no potential museum operator identified at the time of negotiating the lease, the Commission accepts that the arrangements in the draft project agreement represent a realistic balance between on the one hand trying to preserve the link with television as part of a building let as a place of public recreation and on the other securing space to be used for other types of public recreation if no one can be found to operate a television museum.

- *Willis organ and theatre.*
Representations were made seeking assurances and making suggestions about the future of these. The Trustee explained that the lease provides for the developer to assist the Alexandra Park Organ Appeal Society to raise funds for the improvement and retention of the organ. The Trustee also explained that the covenant to bring the theatre back into use for an operator, subject to detailed provisions in the project agreement was as specific an agreement about the future of the theatre as they could secure.
- *Monitoring Arrangements.*
Representations were made suggesting how the compliance by the developer with obligations in the lease and development agreement should be monitored. The Trustee acknowledged that it is essential for it to have monitoring processes in place and explained that it was considering processes with a view to adopting them. By the inclusion of directions in the draft order, the Commission had already drawn the attention of the public and the Trustee to the importance of the Trustee's role in monitoring and ensuring compliance with the developer's obligations under the lease and project agreement. The adoption of procedures is a matter for the Trustee's discretion. With the advantage of its professional advice on the lease, it is best placed to select appropriate procedures.

- *Statutory Advisory Committee.*
The Alexandra Park and Palace Act 1985 created a Statutory Advisory Committee and sets out a clear statement of its responsibilities and its relationship with the Trustee. Representations expressed concern at whether the Statutory Advisory Committee had been properly involved in the decision to let the Palace. The Trustee gave assurances that it had, given its position and terms of reference. However to ensure the Statutory Advisory Committee's role in respect of the rights the Charity retains over the Palace is recognised, the Commission will introduce a reference to it in the directions in the order.
- *The Park.*
Representations expressed concerns about whether the use of the Palace would interfere with the Park and how the Park would be funded. The proposed lease requires the Palace to be used consistently with the purposes of the Alexandra Park and Palace Acts and also includes a covenant not to cause what is called a nuisance to neighbouring properties. These covenants will require monitoring and enforcement by the Trustee. In terms of financial support for the Park, the Trustee explained this has been budgeted for and a request has been made to Haringey.
- *Other issues.*
Representations raised other issues which have been considered. The Trustee explained that questions relating to listing, planning, health and safety during construction and traffic impact in the locality are matters for the planning authority to consider in the context of planning applications. The Trustee explained that the lease does not include metropolitan open land so concerns about letting metropolitan open land do not arise. The Trustee has accepted that any use of part of the Palace as a Casino would have to be established as being consistent with the purposes of the Alexandra Park and Palace Acts and in any event is not a current issue because Haringey has not applied for the ability to licence a small casino under the Gambling Act 2006.
- *Issues already considered.*
Some representations questioned the power of the Commission to make the order or whether the lease fell within the power granted by the Scheme. Others questioned whether the Commission had given enough public notice of its intention to make the order. Some had made detailed comments about the terms or sufficiency of the proposed lease or suggested ways the Commission should go about reviewing the proposed lease and other documents. Others expressed concern about the process by which the preferred bidder was selected. Some expressed concern that the Trustee as the main supporter of the charity was in a conflict of interests. These issues have been considered as indicated above and formed part of the Commission's decision.

6 Conclusion

Having considered the issues and representations 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 of 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 Commissioners noted that following the grant of the proposed lease, the Trustee will retain 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 interest of the Charity and provided an advantageous means of furthering its purposes, and consequently will be authorised under the Charities (Alexandra 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 that 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.

CHARITY COMMISSION

ALEXANDRA PARK AND PALACE

REVIEW OF A DECISION AND SUBSEQUENT ORDER AUTHORISING THE GRANT OF A LEASE OF THE PALACE AND SURROUNDING LAND UNDER THE CHARITIES (ALEXANDRA PARK AND PALACE) ORDER 2004

REVIEW CONCLUDED 4 JUNE 2007

1 The issue before the Commission

1.1

A review of the Commission's decision finalised on the 27 April 2007 (the decision) and Order dated 4 May 2007 (the Order) authorising the grant of a lease over Alexandra Palace and the immediate surrounding land for 125 years under clause 3 of the Scheme established under the Charities (Alexandra Park and Palace) Order 2004 (the Scheme).

1.2

An interested member of the public, Mr Jacob O'Callaghan, had asked the Commission to review the decision on the basis of "*the general untrustworthiness of statements made to it about the accounts of the charity on behalf of the trustee in order to procure the order and the Scheme*". In particular, it was said that:

- (1) statements made to the Commission had been based on "*accounts and alleged liabilities of the charity and claims for indemnity by the trustee*" which the Attorney General had not accepted; and
- (2) statements about "*the long term financial history and unviability of the charity made to the Commission were untrue, not in accordance with unchallenged audited accounts and which the statutory Advisory Committee to the charity did not accept*" (letter dated 15 May 2007).

1.3

The review of the decision and Order is made on behalf of the Commission by Lindsay Driscoll and John Williams, members of the Commission's Board and Commissioners (the Commissioners) under delegated authority.

2 Power to review the decision and Order

The Commissioners noted that section 89(3) of the Charities Act 1993 confers power on them to discharge an order if they are satisfied that the order was made by mistake or on misrepresentation or otherwise than in conformity with the Act. However, that power is exercisable only in respect of "an order under any provision of this Act". The order which is being challenged was made

principally under the Scheme established by the Charities (Alexandra Park and Palace) Order 2004 (the "Scheme"). The Commissioners concluded that, even if there was doubt as to the application of section 89(3) to the present case, they had an implied power to discharge the order if it had been made as a result of a material mistake or misrepresentation.

3 Review decision of the Commission

3.1

The Commissioners noted that the broad concerns raised by Mr O'Callaghan had been brought to their attention at their meetings on 3 April 2007 and 27 April 2007 where they had also been advised of the extent to which the financial viability of the charity had been an issue in the past. However, given Mr O' Callaghan's continuing detailed concerns about the financial position of the Charity and how this had been represented to Parliament at the time the Scheme was debated and the Commission in connection with the decision to make the Order, the Commissioners decided they would review their decision, in order to deal explicitly with those concerns.

3.2

The Commissioners had previously taken into account the fact that the amount of the sums outstanding between the charity and the trustee had been the subject of a dispute with the Attorney General represented by the Treasury Solicitor. However, the Commissioners had also had the opportunity at that meeting to consider the charity's audited accounts which, since the financial year ending 31 March 1997, had expressly referred to an agreement which had been reached with the Treasury Solicitor's office relating to the trustee's entitlement to indemnification. The question of the debt which had been disputed by the Treasury Solicitor's office predates the Scheme which permitted a long lease of 125 years on a commercial basis. The Commissioners considered that their decision was in respect of whether to authorise a particular exercise of that power to let and considered the representations and these concerns in that context.

3.3

The Commissioners were satisfied from the financial position of the Charity as it appeared to them and the Charity's current circumstances that the Charity lacked the resources to operate as a going concern, to repair and maintain its property or to bring the property into full use to effectively pursue its charitable purposes. They noted that issues concerning the financial viability and position of the Charity had been raised in Parliament at the time the Scheme was being debated. They noted that in response the Minister, Fiona Mactaggart had stated,

"Moneys in and moneys out may balance, but the Park and Palace are in a grotesque state and declining and resources are not available to bring them

into a reasonable state. Current expenditure and income with a bit of cross-eyedness, may seem to balance, but even with the wildest imagination the Trust cannot be described as a going concern. That is serious. A situation could continue for a short time, but not forever."

She further said,

*"We all accept that the situation is unacceptable and that substantial resources are required to resolve it.....we have to find substantial resources if we are to make the asset available to the public."*¹

It was on this basis that the power which was conferred in the Scheme to give the Trustee options to raise funds to secure the future of the Park and Palace was established. It appeared to the Commissioners that the financial position of the Charity remained unchanged.

3.4

The Commissioners concluded that the Scheme was established to enable the Charity to be put on a secure financial footing and to enable the Palace to be used in accordance with the purposes of the Charity. They concluded that both the Trustee and the Commission were entitled to rely on that fact and that whatever the financial position of the Charity might eventually turn out to be, as a result of Mr. O' Callaghan's concerns, on the evidence currently before them, these would not be sufficient to displace the basis upon which the Scheme was established by Parliament, and upon which they reached their decision on the 27 April 2007, as a consequence of which the Order was made.

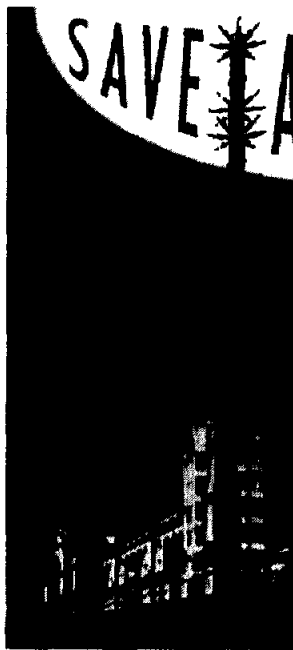
3.5

The Commissioners noted that they had considered during their meetings in April the other matters subsequently raised by Mr O'Callaghan. They had satisfied themselves that they had power to make the order under the Charities (Alexandra Park and Palace) Order 2004. They had also considered the implications of the issue of whether the Trustee had an obligation to maintain the Palace from its own resources.

4 Conclusion

Having reviewed their decision, the Commissioners concluded that the decision should stand.

¹ Parliamentary Debates: House of Commons Official Report. First Standing Committee on Delegated Legislation. "Draft Charities (Alexandra Park and Palace) Order 2003", Wednesday 14 January 2004, Column 18



SAVE ALLY PALLY

Press Releases

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Decision of the Charity Commission

19.5.07

The 328 people and organizations who objected to the selling of the building to a developer have been sent a letter from the commission, informing them that apart from a concession to the trustees of the CUFOS premises (a community organization in the old ticket hall of the original railway station next to the Palace), none of the objections have been in any way listened to or the Order for the lease changed. No reasons or explanations have yet been given.

This statement from the commission is completely misleading. What it doesn't mention is that any Judicial Review after 1 month will be almost certainly too late. Originally the Agreements stated that Firoka had to wait until the three-month deadline for JR was up. After pressure from Firoka, the AP management got the trustees to agree to change this allow Firoka to complete the deal if it wants just one month after May 4th, when the Order was signed.

Objectors are therefore now planning to apply to the High Court for a JR before June 4.

Letter from Charity Commission to objectors

Dear Sir/Madam

Alexandra Park and Palace (reg. no. 281991)

I am writing to you in connection with Alexandra Park and Palace. Thank you for the representations you provided to us during the public consultation into the proposal to lease Alexandra Palace to Firoka (Alexandra Palace) Limited for development.

During the consultation process we received 328 representations. The public consultation process ended on 5th January 2007 and since that time we have been analysing and considering those representations. Due to the high profile of the charity and the number of representations received it was determined that the decision as to whether the Order could be made consenting to the lease of the Palace would be made by two members of the board of the Charity Commission, known as Commissioners. We presently have 5 members of the board of the Charity Commission, including its Chair.

The Commissioners met on 27th April and made the decision that the Charity Commission is satisfied that the proposed lease is permitted by the terms of the 2004 Order. They also decided that the Charity Commission is satisfied that the trustee has exercised its discretion properly in deciding to enter into the lease and that the lease is expedient in the interests of the charity. The Charity Commission has sealed the Order giving its consent to the 125 year lease to be entered into with Firoka (Alexandra Palace) Limited.

In response to the public consultation, the Charity Commission has secured the agreement of the trustee to grant the charity called CUFOS (Community Use for the Old Station) protection of its existing lease of the old station building under the Landlord and Tenant Act 1954. The Charity Commission's Order also makes directions to the trustee to ensure it complies with its obligation to consult the Alexandra Park and Palace Advisory Committee.

The full decision of the Charity Commission will be published shortly, this will be accessible from the Commission's **website**. (or click here to **download** a pdf from our website)

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If you wish to appeal this decision, you will need to apply to the High Court for a Judicial Review within 3 months of the date of the decision. (You may find the following **website** helpful)

If you wish to complain about the standard of service you have received, please write to Charity Commission Direct, PO Box 1227, Liverpool, L69 3UG, addressing your letter to our Customer Services Team. Further information can be found on our website under '**About the Charity Commission**'.

Yours faithfully

Victoria Crandon

e: adviceandorders.taunton@charitycommission.gsi.gov.uk

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