

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.

Contacts:

Kenneth Dibble, Executive Director, Legal and Charity Services
020 7674 2375
kenneth.dibble@charitycommission.gsi.gov.uk

Victoria Crandon, Case Officer
01823 345135
victoria.crandon@charitycommission.gsi.gov.uk

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