

Crandon Victoria

From: Iain Harris [I.Harris@howardkennedy.com]
Sent: 01 June 2006 08:28
To: Crandon Victoria
Subject: RE: AP

Vicky

I did not telephone you yesterday, having received your email. I wanted to check where we stood as regards the timing on the draft documentation.

The draft lease is with the proposed tenant's solicitors and we are currently awaiting their response. Laurie Heller, the draftsman at Berwin Leighton, is away this week and therefore the date you give of 15 June by which you hope to respond is acceptable.

We are all keen to make progress, which is why I have written, and to try to avoid any further slippage in time scales.

In these circumstances I look forward to hearing from you by 15 June

Iain Harris
Partner
Howard Kennedy, Solicitors

email: I.Harris@howardkennedy.com
tel: +44(0)20 7546 8986
mobile: +44(0)7971 681704
fax: +44(0)20 7664 4586
url: <http://www.howardkennedy.com>

From: Crandon Victoria [mailto:victoria.crandon@charitycommission.gsi.gov.uk]
Sent: Wednesday, May 31, 2006 9:27 AM
To: Iain Harris
Subject: RE: AP

Dear Iain

You may of course telephone me to discuss this.

I haven't had an opportunity to look at the papers you have sent through, but as I need to pass them on to my colleagues in our legal team, I will do that this afternoon. I do know that the lawyer who has been dealing with it here, is not in work this week, but I will raise its profile with our legal team.

I would hope to be in a position to get back to you by the 15th June, is that acceptable to you?

Yours
Vicky

Victoria Crandon
Senior Specialist Casework Manager
Tel (01823) 345135

From: Iain Harris [mailto:I.Harris@howardkennedy.com]
Sent: Wednesday, May 31, 2006 9:22 AM
To: Crandon Victoria
Subject: AP

Victoria

May I telephone you today to see if you can give me an indication on this and an idea of timing

Iain Harris
Partner
Howard Kennedy, Solicitors

email: I.Harris@howardkennedy.com
tel: +44(0)20 7546 8986
mobile: +44(0)7971 681704
fax: +44(0)20 7664 4586
url: <http://www.howardkennedy.com>
<<H2667382.DOC>>

The contents of this email and any attachments are strictly confidential. They may not be disclosed to someone who is not a named or authorised recipient. They may also be subject to legal professional privilege and unauthorised disclosure, copying or use is prohibited.

If you receive this e-mail in error please notify the sender by replying using the words Misdirected E-mail in the subject, and then delete the message and any attachments from your system.

Although this e-mail and any attachments have been scanned for viruses, the success of scanning products is not guaranteed. The recipient(s) should therefore carry out any checks that they believe to be appropriate in this respect.

In view of the provisions of the Human Rights Act 1998 the Partners of Howard Kennedy do not monitor all outgoing e-mails from the firm. The partnership accepts no liability for the contents of e-mails unconnected with the affairs of the firm or its clients.

Please note that this email has been created in the knowledge that

01/06/2006

194

Mick George

From: Crandon Victoria
Sent: 30 June 2006 10:12
To: 'Iain Harris'
Subject: RE: Alexandra Palace

Iain

In connection with the term 'quality due diligence' in the penultimate paragraph of my letter, I was making reference to the following types of information, which is of course not an exhaustive list: health and safety reports and statistics, recommendations from other similar types of renovations, assessment of quality of previous work, references taken up, any quality marks achieved or similar, charter standards achieved or similar, RICS or CIOB membership and/or awards achieved, experience of similar projects, recommendations from English Heritage/National Trust, reports and background of personnel who will be involved in the project etc.

I hope this is of some help.

Yours sincerely

Victoria Crandon

Victoria Crandon
Senior Specialist Casework Manager
Tel (01823) 345135

From: Iain Harris [mailto:I.Harris@howardkennedy.com]
Sent: Thursday, June 29, 2006 1:12 PM
To: Crandon Victoria
Subject: FW: Alexandra Palace

Vicky

May I press for your answer to this please as a priority

I cannot respond to your letter without clarification from you as to what you mean

My letter on timescale follows

Iain Harris
Partner
Howard Kennedy, Solicitors

email: I.Harris@howardkennedy.com
tel: +44(0)20 7546 8986
mobile: +44(0)7971 681704

fax: +44(0)20 7664 4586
url: <http://www.howardkennedy.com>

From: Iain Harris
Sent: Monday, June 26, 2006 12:16 PM
To: 'Crandon Victoria'
Subject: Alexandra Palace

Vicky

Thank you for your letter of 15 June to which I will be letting you have a substantive response in due course.

May I seek clarification on one point at this stage

In the pre penultimate paragraph on the second page you use the expression "financial and quality due diligence."

I am quite clear on what you mean by financial. Would you be so kind as to clarify what you mean by quality.

Does this relate to something other than the financial standing?

Iain Harris
Partner
Howard Kennedy, Solicitors

email: I.Harris@howardkennedy.com
tel: +44(0)20 7546 8986
mobile: +44(0)7971 681704
fax: +44(0)20 7664 4586
url: <http://www.howardkennedy.com>

The contents of this email and any attachments are strictly confidential. They may not be disclosed to someone who is not a named or authorised recipient. They may also be subject to legal professional privilege and unauthorised disclosure, copying or use is prohibited.

If you receive this e-mail in error please notify the sender by replying using the words Misdirected E-mail in the subject, and then delete the message and any attachments from your system.

Although this e-mail and any attachments have been scanned for viruses, the success of scanning products is not guaranteed. The recipient(s) should therefore carry out any checks that they believe to be appropriate in this respect.

196

21/02/2007

In view of the provisions of the Human Rights Act 1998 the Partners of Howard Kennedy do not monitor all outgoing e-mails from the firm. The partnership accepts no liability for the contents of e-mails unconnected with the affairs of the firm or its clients.

Please note that this email has been created in the knowledge that Internet email is not a 100% secure communications medium. We advise that you understand and accept this lack of security when emailing us.

A list of our partners can be obtained from our offices at 19 Cavendish Square, London, W1A 2AW or by e-mailing info@howardkennedy.com and requesting a copy.

This message has been scanned for viruses by BlackSpider MailControl.

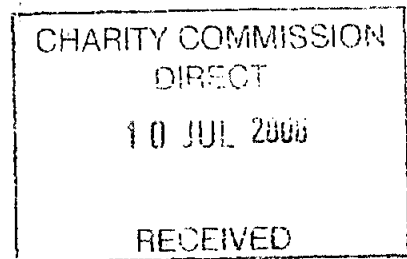
PLEASE NOTE: THE ABOVE MESSAGE WAS RECEIVED FROM THE INTERNET. On entering the GSI, this email was scanned for viruses by the Government Secure Intranet (GSI) virus scanning service supplied exclusively by Cable & Wireless in partnership with MessageLabs.

In case of problems, please call your organisational IT Helpdesk.

The MessageLabs Anti Virus Service is the first managed service to achieve the CSIA Claims Tested Mark (CCTM Certificate Number 2006/04/0007), the UK Government quality mark initiative for information security products and services. For more information about this please visit www.cctmark.gov.uk

Mrs V Crandon
Charity Commission Direct
PO Box 1227
LIVERPOOL
L69 3UG

7 July 2006



Dear Mrs Crandon

Alexandra Park and Palace
Registered Charity Number 281991

Thank you for your letter of 15 June in which you have posed a number of questions. You have indicated that the Commission must first consider whether the proposed letting is authorised by the scheme and thereafter whether the proposed Lease is in the interests of the Charity. For ease of reference I will use headings.

Is the letting authorised by the Scheme?

You express concern that the wording of the Scheme might be an obstacle to the letting. You say it is accepted that the purposes of the Charity are exclusively charitable and then question whether the object of maximising income is not consistent with the purposes of the trust.

It would be extraordinary if the wording of the Scheme were to be an obstacle to the letting. The entire process of securing the Scheme, from 1995 to 2004, was driven by the prospect of securing a commercial letting of the whole of the Palace building.

In this regard I think it helpful to refer back to the decision given by Mr Justice Pennycuik in *Alexandra Park Trustees and Another -v- Haringey London Borough and Others* 66(LGR) 306.

You will no doubt be familiar with the fact that this was the case in which the Alexandra Park Trustees challenged the power of the Minister of Housing and Local Government to make the Order known as the Alexandra Park and Palace Order 1966.

The first consequence of that challenge was that the Court determined, as a preliminary question, whether or not the Trusts in the 1900 Act were charitable. Mr Justice Pennycuik ruled at the top of page 317 in the following terms:-

"So I come to this, that this Act, the Act of 1900, imposes on the Trustees the duty to use the Park and Palace and to apply the income for purposes which are wholly charitable, the only substantive

purposes being the free recreation on the part of the public and in certain accomodation for volunteer purposes and for educational purposes."

In his Judgment Mr Justice Pennycuick referred on page 316 to the "curious expression free use and recreation". He said that

"I think the expression can be no more than use by way of free recreation and free use by way of recreation..."

There had for some time been a suggestion that this wording disentitled the Trustees from making any charges for use of the facilities.

I had always advised that within the context of the 1900 use of language "free recreation and free use by way of recreation" meant unlimited rather than free in the sense of uncharged.

I believe any doubt about the meaning of that expression was laid to rest by the Court of Appeal in Alexandra Palace Ski Centre Limited -v- London Borough of Haringey. The case was not reported in the Law Reports, although it was reported in the Times newspaper and I have transcripts of the Judgements.

I acted for the Trustees and the argument advanced in that case was that a Lease they had granted was ultra vires because as the Trustees had no power to charge they could not permit their Lessees to charge.

This was a test case run in order to establish that the Trustees could charge. In his Judgment Wall J (as he then was) said at page 6

"in my Judgment, therefore, for this provision to have any meaning there must be implied into section 4 a power to permit the Lessee to make a reasonable charge for the use of the facilities provided. To put the matter crudely: if the plaintiffs were not permitted to charge the public to use the ski centre there would be no ski centre. Provided the purposes for which the Lease itself is granted are lawful and intra vires the power to grant a Lease must include the power to insert provisions within it to make it effective.

Wall J went on in his Judgment to give the following indication:-

"The example which was put to Mr Clark (Counsel for the Trustees) in argument was the hypothetical determination by the Trustees that the provision of tennis courts would be calculated to promote the use and enjoyment of the Park and Palace by the public. Such determination would itself plainly be intra vires. The Trustees have no money to construct tennis courts. They undoubtedly have the power under Section 4 of the Act of 1913 to lease an area of the Park for the purposes of enabling the public to play tennis. They thus equally plainly have the power to grant a Lease to a company which will pay for the construction of the tennis courts. Yet if Mr Clark is right, that company cannot charge members of the public, who continue to have free access to the Park, for the use of the Courts. That is plainly nonsense."

I would respectfully suggest that the situation as regards the current proposed letting is directly analogous to that example.

The Trustees have no money to develop the Palace. They are proposing to grant a Lease to Firoka which will pay for the development of the Palace. It is not correct to suggest that Firoka cannot charge members of the public for use of developed facilities.

Is Small casino Use charitable?

You have expressed concern that use as a small casino is not charitable. This is a very small part of the development proposal, certainly not something that is likely to happen for some time. Be that as it may, I would advance the proposition that casino use does fall within the objects of the Charity as a recreational activity. You will no doubt be aware that for many years the Trustees ran a racecourse with betting at Alexandra Palace and there was never any suggestion that such activity did not fall within the charitable objects.

The Understanding at the Time the Scheme was being promoted

You have invited me to provide material showing the understanding at the time the scheme was being promoted. My files on this go back very many years. I have had exclusive conduct of the matter since 1989 and I have some familiarity with it.

Throughout the period of consideration of what eventually became the 2004 Order it was always the Trustees' position that they wished to grant a long Lease of the development footprint to a Lessee that would inject funds and carry out a commercial development respecting the purposes and objects of the Charity.

I believe the most helpful material that I can provide to you is:-

1. A copy of my letter to Paul Clapp at the Commission of 7 July 1998. (Enclosure 2)
2. The Commission's reply under Mr Clapp's name of 16 October 1998. (Enclosure 3)

As will be apparent from my letter of 7 July 1998 there was then a preferred developer that was planning to inject substantial funds. However, the Trustees suggested, and the Commission agreed, that the development proposal and Scheme should be "decoupled or separated". This was because the Trustees wished to be granted a power to lease without that power being linked to a particular developer or development proposal.

That was the eventual decision that was made by the Commission as communicated in Mr Clapp's letter of 16 October 1998. Mr Clapp indicated that the Trustees had concluded the future of the Charity could best be secured by a long term letting. He said that was a matter for the judgment of the Trustees but "we see no reason to disagree with this view."

I would suggest that amounted to rather more than tacit approval of the proposed granting of a long Lease to a commercial organisation for the commercial development within the objects and powers of the Charity.

Is the Lease in the interests of the Charity".

You start by asking for extrapolation of the reasoning from 1998 to today as to why a development Lease is considered appropriate.

Appendix A to the Report which I copied to you, that I presented to the Board on 6 July 1998, contained a schedule of income and expenditure from the years 1988/89 to 1997/98. A further schedule has been prepared, a copy of which is enclosed (Enclosure 4) covering the financial years from 1998/99 to 2005/06. This shows that the deficit continues to run at levels between £360,000 (the lowest in 2000/2001) and £940,000 (the highest in 2003/4.) These are all audited figures.

Whilst the accounts to 31 March 2006 have not yet been finalised, the comparable figures for this financial year are also shown in the schedule.

Draft Project Agreement

As requested, I am enclosing a copy of the draft Project Agreement (Enclosure 5) as referred to clause 3.3 of the draft Lease.

The Basis the staged caps on the guarantee will be negotiated and calculated.

Extensive financial and quality due diligence

You have, in response to my request for clarification, indicated in your email of 30 June that "quality due diligence" refers to, without this being an exhaustive list,

"health and safety reports and statistics, recommendations from other similar types of renovations, assessment of quality of previous work, references taken up, any quality marks achieved or similar, charter standards achieved or similar, RICS or CIOB membership and/or awards achieved, experience of similar projects, recommendations from English Heritage/National Trust, reports and background of personnel who will be involved in the project etc."

I will deal separately with these aspects:-

Financial diligence

This was carried out by the Charity's financial advisers, ABROS as summarised below.

The bid submitted by the Firoka Group proposed Firoka (Heythrop Park) Ltd as developer and Firoka (Kings Cross) Ltd as Guarantor. It has subsequently been proposed, and accepted by the Trustees, that the tenant will be a special purpose vehicle, which has not yet, so far as we are aware, been incorporated. Firoka (Kings Cross) Ltd will be the guarantor.

Reports were obtained for the Firoka Group entities bulleted below.

- Firoka (Heythrop Park) Ltd;
- Firoka (Kings Cross) Ltd; and
- Firoka (City) Ltd.

The reports are based upon the last 3 years accounts to end of September 2005 and the key elements are summarised in the table below.

Although Firoka (City) Limited is not directly involved in the proposed transactions this entity has been included in the analysis because of its financial relationship with the other two entities.

Table 1:

Company	Firoka (Heythrop Park) Ltd	Firoka (Kings Cross) Ltd	Firoka (City) Ltd
Legal Form and date registered	Private Limited Company 10/12/99	Private Limited Company 02/02/90	Private Limited Company 10/12/99
Parent Company	Firoka (City) Guernsey Ltd	Firoka (Kings Cross) Guernsey Ltd	Firoka (City) Guernsey Ltd
Principal	Firoz Alibhai Kassam	Firoz Alibhai Kassam	Firoz Alibhai Kassam
Principal Asset(s)	Hotel and Conference facility Chipping Norton	Holiday Inn, Kings Cross	Holiday Inn London City
Net Worth (unadjusted)	£2.15 million	£62.87 million	£33.30 million

Company	Firoka (Heythrop Park) Ltd	Firoka (Kings Cross) Ltd	Firoka (City) Ltd
Adjusted Net Worth (adjusted for group debtors and guarantees given)	£2.10 million	£38.69 million	£19.29 million
Guarantees Provided	None	£10.75 million (Firoka (Oxford Cinemas) Ltd and Firoka (Oxford United) Ltd)	None
Group Debtors	£0.05 million	£13.43 million	£13.91 million
Profitability – Profit Margin, 3 Year Average	15.57%	25.57%	33.9%
Liquidity – Current Ratio, 3 Year Average	1.76	3.80	7.63
Overall Risk Assessment as per Report	Low	Minimal	Minimal

Notes to Table:

1. Profit margin = profit before tax/turnover
2. Current Ratio = current assets/current liabilities
3. Firoka City Ltd profit margin and current ratio based upon 2002 – 2004 accounts

General Comments

All the entities are trading profitably and Firoka (Kings Cross) Ltd and Firoka (City) Ltd have shown year on year profit growth for the past 3 years. The adjusted Net Worth figures shown represent the worst case position in the event of default on all related party loans and call-in of guarantees given. Each of these three entities is being monitoring for financial announcements. This means that if there is any change in ownership or risk status based upon publicly available information in the next 6 months the Trust financial advisors will be notified.

The above analysis was undertaken at bid appraisal stage. We have recently been advised by the Firoka Group that the Group interests in Firoka (Oxford United) Ltd and Firoka (Oxford Cinemas) Ltd have been disposed of and as a result the guarantee of £10.75 million from Firoka (Kings Cross) Ltd to these two entities has reduced to £7.25 million. This has the effect of increasing the adjusted net worth of Firoka (Kings Cross) Ltd.

We have also been told that Firoka (Alexandra Palace) Ltd has been incorporated as a subsidiary of Firoka (Kings Cross) Ltd.

Quality Diligence

The matters you have listed were, in the main, part of the evaluation process undertaken by the Trustees professional team. May I refer you to what you have described as the Charity's confidential scoring of the developer's plans.

In Firoka's detailed submission, a copy of which has been provided to you, there are full details of its experience with similar types of renovations, (although Alexandra Palace is unique) in particular, Heythrop Park and Studley Castle, both of which are Grade II star listed properties where Firoka worked with English Heritage.

A number of the professional team visited Heythrop to obtain satisfaction as to the level of works carried out.

The developer's advisers

These are detailed on the final two pages of their development proposal, which I have copied to you. Their architects are Aukett Fitzroy Robinson, their quantity surveyors are Ridge Project Managers, their surveyors and property consultants are Gerald Eve, their planning and development advisers are JPPC and their solicitors are Messrs Lewis Silkin.

Given the standing of these advisers it has not been thought necessary to carry out financial and quality due diligence on them.

As yet, details of the developer's sub contractors, if any, are not known.

How will the Charity be affected by Default or insolvency of the Developer

The Lease to the developer is subject to forfeiture on breach of obligation or in case of insolvency of the developer or the guarantor. That right is, of course, subject to relief granted by the court which would generally be granted but on suitable terms for remedy of the breach.

If breach continued or there were insolvency, ultimately forfeiture would be ordered. If the guarantor becomes insolvent, the developer is required to provide a replacement guarantor of suitable status.

The Project Agreement which deals specifically with the proposed refurbishment and development is supplemental to the Lease; a material breach of its obligations is treated as a breach of obligation of the Lease and gives rise to forfeiture. Termination of the Lease terminates the Project Agreement, and termination of the Project Agreement is a breach of condition under the Lease.

Risk Management Conclusions

You have indicated that what matters is whether the best terms that can reasonably be obtained are on offer and there is some evidence that these are the only terms which might be reasonably obtained. You have asked for my view.

Without wanting to be unhelpful, I am not sure that it is for me to express a view on this aspect.

The Trustees have undertaken a comprehensive market testing process over a period now of nearly 2 years. Full details of the marketing appear in King Sturge's report, together with details of the expressions of interest and the short listed bidders of which two put in proposals.

King Sturge have expressed their professional opinion that the proposed letting represents "best disposition" for the Trust under the Charities Act 1993.

There is a further matter that I think it appropriate to put before the Commission. It is plain from this Charity's accounts that it is insolvent. The registered auditor only signs the accounts as a going concern on the basis of note 1(c) in the following terms:-

"Alexandra Park and Palace is a going concern because the overall Trustee, Haringey Council, uses its corporate funds to support the revenue deficits of the Trust. It is the Council's current policy to continue providing this support until responsibility for the asset passes to a private developer and the support of the Council is no longer required."

I am told that Haringey Council remains willing to continue to support these deficits but if, for any reason, the present development proposal falls it will review its continued funding and may decide to withdraw. I am also told there are complex issues as to whether Haringey Council has legal power both to fund and to withdraw from funding. In the event that this course is followed there is a serious risk that the Charity will have to stop trading and go into some form of insolvent liquidation.

I hope that I have provided you with sufficient information and that you will now be able to give an in principle indication that the Commission will make the appropriate Section 36 Order.

Yours sincerely



IAIN HARRIS

pp.
Encs:

1. Draft Lease
2. Copy letter to Paul Clapp
3. Commission's reply.
4. Schedule
5. Draft Project Agreement



Mr Iain Harris
Howard Kennedy
19 Cavendish Square
London
W1A 2AW

Charity Commission Direct
PO Box 1227, Liverpool L69 3UG

t: 01823 345135
f: 01823 345008

Your Ref: IMH1/014086.00049
Our Ref: VC/522431/A&O(T)

Date: 07 July 2006

Dear Mr Harris

Alexandra Park and Palace (reg. no. 281991)

Thank you for your letter dated 30th June in which you lay out your proposed timescales. I note that the Standard Advisory Committee is due to meet on 20th July and the trustees hope to resolve to apply for a section 36 Order at their meeting on 24th July.

As you are aware we need to give 28 days notice to this Order. We then need to give due consideration to any representations we may receive following the publicity of the draft Order. As I have received a handful of early representations already, I anticipate that we will receive representations to this Order. I note you wish for the transaction to be completed at some time during the course of September. I must say that I think that this is particularly optimistic given that we won't be in a position to start to consider the representations until September, at the earliest.

I will though bear your timescale in mind.

In connection with the draft lease, I will wait to see the revised document when you send your substantive letter.

Yours sincerely

Victoria Crandon

e.vcrandon@charitycommission.gsi.gov.uk

Your ref VC/552431/A&O(T)
Our ref IMH1/014086.00049
Document ref VP/H2734256.1

022451

HOWARD KENNEDY

19 Cavendish Square London W1A 2AW
Telephone +44 (0)20 7636 1616
Fax +44 (0)20 7664 4586

enquiries@howardkennedy.com
DX 42748 Oxford Circus North
www.howardkennedy.com

Direct line +44 (0)20 7546 8986
Email i.harris@howardkennedy.com

Mrs V Crandon
Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

26 July 2006

Dear Mrs Crandon

Alexandra Park and Palace
Registered Charity No: 281991

I am writing further to my letter of 7 July which you kindly acknowledged on 11 July. However, this letter is concerned with the matters set out in my previous letter to you of 13 June to which you kindly responded on 7 July.

As indicated in my letter of 30 June the Statutory Advisory Committee held a special meeting on 20 July. It formulated a resolution in which it proffered certain advice and made a number of recommendations to the Trustees for their consideration.

The advice and recommendations were duly considered at a special meeting of the Alexandra Palace and Park Board held on Monday, 24 July. The Board made formal resolutions and I will let you have copies of these as soon as they are available.

The Board were also presented with detailed draft documentation constituting the draft Lease, draft Project Agreement and draft Employment and Pensions Agreement.

At present the draft documentation is still subject to further changes. The Board delegated authority for the approval of drafting changes to the General Manager who will act on the advice of the Project Advisers, Messrs Berwin Leighton Paisner.

Subject to that delegation and eventual agreement of documentation the Board resolved to apply for an Order under Section 36 of the Charities Act 1993 authorising the grant of the Lease to Firoka (Alexandra Palace) Limited.

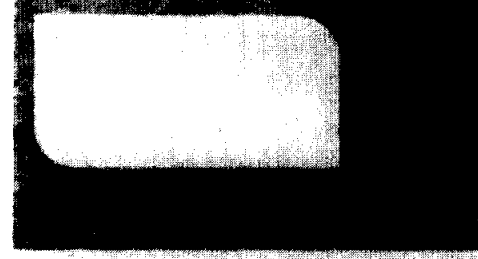
I assume that you will not be able to progress with regard to the Section 36 Order until the terms of the Lease have been finally agreed but given the desire of both Trustees and the proposed Lessee to move rapidly forward with this matter, I hope this early notification of the Board's decisions will enable you to put in hand whatever preparatory work may be necessary.

I look forward to receiving your response in due course when you will no doubt tell me what, if anything further, is required from me and/or the Trustees and I hope give some indication of timescale.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iain Harris', with a long horizontal flourish extending to the right.

IAIN HARRIS



Mr Iain Harris
Howard Kennedy
19 Cavendish Square
London
W1A 2AW

Charity Commission Direct
PO Box 1227, Liverpool L69 3UG

t: 01823 345135
f: 01823 345008

Your Ref: IMH1/014086.00049
Our Ref: VC/522431/A&O(T)

Date: 28 July 2006

Dear Iain

Alexandra Park and Palace (reg. no. 281991)

Thank you for your letter of the 7th July enclosing various papers and detailed information.

Since our last correspondence, we have had the opportunity of reviewing our files from the time that the Scheme was promoted in Parliament. From that and with the help of the information and argument you have provided to date, we are able to confirm that the Commission will be minded to make an Order under the Scheme subject to being satisfied on the following three matters. The information already provided goes some way towards demonstrating these points.

Is the proposed lease within the power provided by the Scheme?

The terms of the Scheme qualify the power of the trustees to lease the land known as the development footprint. The power is to enter into the lease "at the best rent reasonably obtainable regard being had to the purpose... provided that the trustees may not grant any such lease which permits a use otherwise than is consistent with the said purposes".

The power therefore requires the trustees to enter into a lease on particular terms. The permitted use must be consistent with the purposes of the trust. The power recognises that a rent which is different from usual open market terms would be achievable, as the requirement to secure the best rent reasonably obtainable is qualified by the need to have regard to the purpose.

We agree with your view that in constructing the Scheme, a distinction is to be drawn between purpose and the question of whether the purpose is carried out for public or private benefit. As such the carrying on of the business of the Palace at a profit is not inconsistent with the *purposes*. We would add that the purpose discernable from the statutes governing the Charity and as summarised in the preamble to the Alexandra Park and Palace (Public Purposes) Act is use as a place of public resort and recreation. This is a purpose distinct from that recognised in the Recreational Charities Act 1958 and so may well be wider. We acknowledge for example that the 1900 statute expressly envisages that part of the Palace be used as a hotel and theatre (section 17 (iii)). We would add that we recognise that a small Casino facility might be ancillary to hotel facilities.

The xxx

We would also be grateful for confirmation that the trustees have considered the impact that the development and user of the Palace will have on the remainder of the Park. Have the trustees considered access, egress, noise, vibration, light, smell and any other impacts the proposed development might have on the Park? This is to ensure that the use is also consistent with the purposes of the Charity in not interfering with the use of the Park by beneficiaries within the objects.

We agree that the Scheme xxx

We have seen advice provided by King Sturge on 1 May 2006 that the lease on the terms set out in the draft and at the rent then agreed and now set out in the latest draft represents the "best disposition for the Trust in accordance with the Charities Act 1993". In addition, please provide confirmation that King Sturge consider that the transaction is at the best rent reasonably obtainable

xxx

We would also be grateful for their confirmation that the development footprint to be leased contains no more land that is indicated by the plan referred to in The Charities (Alexandra Park and Palace) Order 2003.

This information will enable us to complete the process of forming a view as to whether the proposed lease falls within the power set out in the scheme.

Have the trustees considered all other options in respect of the Palace?

You have provided outline financial information going back to 1998 and an indication that the trustees consider that Haringey Council will not continue to fund shortfalls in the Charity accounts unless the proposed lease goes ahead. You have also provided information showing that the proposed tenant was selected as a preferred bidder after a rigorous analysis of bids made for the development of Alexandra Palace. That information tends to show that the trustees have considered the consequences of continuing to operate Alexandra Palace in the way it does now, and have considered the proposals of other potential tenants. The basis on which The Charities (Alexandra Park and Palace) Order 2003 was made was that the trustees would consider all other options. What other options have the trustees considered? Are these all the options? How have the trustees concluded that all options have been explored?

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

The remaining issue is whether the transaction appears to be expedient in the interests of the Charity. In our briefing to the Minister promoting the Scheme, we made it explicitly clear that the Commission would only make an Order if satisfied the lease is expedient in the interests of the Charity and that the Commission will publish a draft of the Order (as Scheme) and consider representations on it.

We would be grateful for a summary argument explaining why the lease is expedient in the interests of the Charity.

The following points indicate matters the Commission considers are relevant to assessing whether granting the lease is expedient in the interests of the Charity, although we expect that the trustees will have considered more. I see that you have already provided information in respect of a number of the points. In those instances, please feel free to refer to the information you have already provided and which we have reviewed. We are looking for a single point of reference for the complete argument that the transaction is expedient in the interests of the Charity.

- The trustees can confirm that historically and currently the operation of the Palace and Park has been at a substantial loss and was operated at a loss that the trustees have no way of funding themselves;
- The trustees can confirm that they have considered all other options in respect of the future of the Palace;
- The trustees understand that the continued support of the losses by Haringey Council is likely to stop if the lease is not entered into and they have considered the effect of that on their ability to deliver against the objects;
- The trustees have run an open tender procedure in order to find potential tenants and have assessed the relative merits of the proposals against criteria they consider to be appropriate to the circumstances;
- The trustees have negotiated terms as favourable as possible from the preferred bidder;
- The trustees consider that lease provides xx
- The trustees consider that user is consistent with the purposes of the acts governing the Alexandra Park and Palace Charitable Trust;
- The trustees can confirm that it is their considered view that the user of the leased land is consistent with the purposes and does not impede the use of the Park within the objects by the beneficiaries;
- The trustees have been professionally advised and agree that the terms of the lease represent the best disposition available and the best rent available;
- The trustees have considered the viability of the proposals set out in the tender document;
- The trustees have considered the risks of the development becoming abortive and have sought financial guarantees during the development phase of the project;
- The trustees have taken steps to investigate the financial strength of the guarantor;
- The trustees have identified what they consider to be appropriate levels of guarantee for each stage of the development;
- The trustees have considered the consequences of the future insolvency of a tenant (after the development stage) and the exercise of any break rights; and
- The trustees have taken appropriate legal advice in negotiating and drafting the lease and ancillary documentation in order to manage legal risks arising from the project.

The information sought above is intended to provide a single reference source for the three matters we have established must be demonstrated before an Order (or given the Commission's undertaking to publish, a Scheme) can be made.

I look forward to hearing from you in due course.

Yours sincerely

Victoria Crandon

e:vcrandon@charitycommission.gsi.gov.uk

Your ref
Our ref IMH1/014086.00049
Document ref VP/H2741119.1

HOWARD KENNEDY

19 Cavendish Square London W1A 2AW
Telephone +44 (0)20 7636 1616
Fax +44 (0)20 7664 4586

enquiries@howardkennedy.com
DX 42748 Oxford Circus North
www.howardkennedy.com

Direct line +44 (0)20 7546 8986
Email i.harris@howardkennedy.com

Mrs Victoria Crandon
Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

2 August 2006

Dear Victoria

Alexandra Park and Palace (Registration No. 281991)

Thank you for your letter of 28 July.

In view of the timetable within which both Firoka and the Trustees wish to progress this matter, I am responding speedily before I leave the office this Thursday for a two week holiday. If you require further information in my absence please feel free to contact the General Manager, Keith Holder, at Alexandra Palace. I am back on 18 August.

I hope that the limited time I have had for consideration and opportunity for input from the other team advisors does not leave any shortcomings with regard to the substance.

I will adopt your headings as the framework for my response.

Is The Proposed Lease Within The Power Provided By The Scheme ?

I am pleased that you are persuaded by my argument that in constructing the Scheme a distinction has to be drawn between purpose and the question of whether the purpose is carried out for public or private benefit.

It seems to me that a key factor in assessing whether or not any use authorised is within the purpose and object of the charity is the need to recognise how "free use and recreation" has changed and will, over time, continue to change.

It was of course not until 1965 that the Court determined the trusts of the 1900 Act were charitable but that determination has formed the benchmark for the assessment of all subsequent activities.

In the years to come, particularly during the 125 years in which Firoka and/or any successors in title may be lessees the nature of "free use and recreation" is bound to continue to change and the draftsman in 2006 will have had that aspect in mind.

As a somewhat trite example, rifle shooting was for many years charitable as a recreational activity. It is no longer and in fact it would be quite unthinkable now for it to be treated as charitable.

You have asked me to "collect your reasonings" in respect of the other uses specified in the draft lease to examine whether these would be consistent with the purposes of the charity directly or ancillary thereto.

The Trustees approach to the issue of "use" was set out in the advertising documentation and the marketing brochure called "Alexandra Palace – Developing The Potential Inside".

In that brochure the Trustees development objectives were set out in the following terms:

"The Alexandra Palace and Park Trust is seeking to engage with a partner to secure a long term future for the Palace, based on improving the available recreation and leisure facilities. Proposals for use of the Palace must be consistent with the Trust's objects, which require that the Palace be used as "a place of public resort and recreation and for other public purposes."

Firoka's response, a full copy of which you have, contains in the opening paragraphs the following statement

"The Firoka proposal improves the facilities currently available and adds many new compatible entertainment and leisure uses to make Alexandra Palace a popular destination for the wider enjoyment of the public, in the spirit of the original People's Palace."

The issue of whether the proposed plans meet the charitable objectives of the trust formed part of the evaluation criteria a copy of which has also been provided to you.

When it came to preparation of the draft lease and in particular the user provisions these needed to reflect not only Firoka's specific proposals but also the manner in which use might change during the 125 years of the term.

The present draft lease contains user provisions at clause 3.10.

one copy of Firoka's

"The 85 hectares of parkland are classified as Metropolitan Open Land and the whole site sits in a conservation area. The leasing opportunity does not extend to the Park and it is only those areas close to the building, mainly hard landscape that may be included in any lease."

Firoka's proposals recognised the landscape setting and incorporate the following in its proposals

"The Park provides the wider landscape setting for the Palace and this is now subject to improvements through lottery funding. However the more immediate setting to the Palace will be improved through landscape proposals for the South terraces, West forecourt to the Hotel and Conference facilities and the revised layout with integral landscape proposals for the East terrace that currently forms the public car park at that end of the site."

Firoka's proposal to cover the costs of maintenance of access roads and the car park was a factor taken into account in the evaluation of its bid.

Of the bids received Firoka was the only one that envisaged continuation of the businesses presently run by the Trustees trading company. Firoka's proposals for development are phased as set out in the draft Project Agreement I have copied to you.

Accordingly whilst during the course of building works there may be some disruption this is unlikely to have any impact upon areas of the Park other than the access roads.

Although the access roads are private, within the ownership of the Trustees, they have always been treated as publicly accessible and indeed there is a frequent bus service that runs through the roads within the Park.

The Trustees view is that the development work by Firoka will not interfere with recreational use of the Park.

You will no doubt have noted the provision in the draft lease which now appears at 3.12.3 where Firoka covenants

"Not to do in or upon the Premises anything which may be or grow to be a legal nuisance or damage to the landlord or to the owners tenants and occupiers of adjoining properties provided always that proper use of the Premises for the Permitted Use shall not in any circumstances constitute a breach of this obligation."

You have referred to the Report of Messrs King Sturge dated 1 May and quoted from the first full paragraph on page 10. That quote needs to be put within context in which it appears, namely the first full paragraph under the heading "Valuation" on page 9. Messrs King Sturge write as follows

"In preparing our valuation, we have had regard to the market, for its existing use and for appropriate alternative use that would satisfy the charitable objectives of the trust..."

Within that context King Sturge confirm that the agreed letting represents

"best disposition for the trust in accordance with the Charities Act 1993."

You will of course appreciate that the Trustees' Section 36(6) Charities Act 1993 Notice exhibited the plan attached to the 2004 Order.

I trust this information will enable you to conclude that that proposed lease is within the power provided by the Scheme.

Have the Trustees considered all other options in respect of the Palace?

Under this heading, you suggest the basis on which the 2004 order was made was that the Trustees would consider all other "options". You have referred to the Order as having been made in 2003. It was in fact made on 27 January 2004 and perhaps the confusion is that the record of the Hansard debate on 14 January 2004 is entitled "Draft Charities (Alexander Park and Palace) Order 2003".

As you know, I have been involved in this matter since the late 1980s and like to think I assisted the Commission with regard to promotion of what eventually became the 2004 Order.

It was not my understanding that the basis of the 2004 Order was that the Trustees would consider "all other options". The basis of the Order was that the Trustees needed to go to the private sector in order to secure a holistic developer.

The Trustees' powers prior to the 2004 Order were confused and muddled. This was because, as the Minister is recorded as having said at the bottom of page 18 of Hansard

"The Trustees' current powers are to lease various parts of the site for specified purposes – limited parts are leased for a limited time. The aim, which is very important, is to permit, not to produce, a scheme that includes the whole of the Palace. Reflecting on previous attempts to deal with the problem, one of the reasons for the Trustees' failure is that a particular scheme was proposed, and then another scheme, which would make that scheme possible, was developed. We are granting a broader permission, which allows enough space for a particular scheme to be developed".

What in my view was clear, from the point the Commission made its decision to promote the scheme, was that the Trustees would be granted a power to lease. During the early stages of negotiations with the Commission the suggestion was that the power would be linked to a particular developer or development proposal.

However, as is apparent from the correspondence in July and October 1998 which I enclosed with my letter to you of 7 July, the Commission agreed that the development proposal and scheme should be "decoupled or separated" so that the Trustees could consider various development proposals.

In my opinion, the issue of consideration of options related not to the issue of whether or not to grant a lease but the issue of to whom a lease would be granted.

I hope you will accept that this was the understanding and that if you re-read the Hansard debate this was directed to a proposed lease of the development footprint.

If you do accept this, then I hope you will also agree the Trustees have undertaken a very full competition in order to secure a preferred developer, Firoka, which has now been selected.

I hope this persuades you that the Trustees were not going to consider options other than the grant of a long lease and that, having considered potential lessees, they have explored that process as thoroughly as is possible.

Is the Granting of the Lease Expedient in the Interests of the Charity?

It seems to me there are two inter-related aspects of this question, namely:

1. Is the granting of a Lease expedient in the interests of the Charity; and
2. Is the granting of this Lease expedient in the interests of the Charity?

I will deal with the questions in turn, under the following numbered paragraphs:

1.1 I believe the Hansard record of the debate on 14 January 2004 sets out clearly why the granting of a Lease is expedient in the interests of the Charity.

1.2 At the top of column 18, the Minister said,

“It is a concern of all us to ensure that every reasonable step is taken to protect its future. The problem is that for many years the site has been deteriorating. We, as parliamentarians, as well as the Charity Commission and Trustees, have a responsibility to ensure that the aims of the 1985 Act and the Trust are properly fulfilled.

Let us be clear: the financial situation is serious and getting worse. That is not new, as my hon. friend, the member for Sittingbourne and Sheppey said, (it)and has been building up over time. The Trustees and the Charity Commission believe that the proposals are in the best interests of the Charity to enable the future finances of the Trust to be more secure.”

1.3 In order to provide you with the requested “single point of reference”, I do, as you suggest, need to recap upon information previously provided.

1.4 The starting point is my report to the Alexandra Palace and Park Board of 6 July 1998. I have previously copied this to you, but if you require another copy, please let me know. That report informed the decision by the Trustees to invite the Commission to request the Trustees to promote a scheme. The report contained at paragraph 5.2.1 the following statement,

“Both prior to Haringey Council becoming a Trustee in 1980 and ever since the Charity has traded at a loss.”

The report appended annual trading losses going back to the 1988/89 year. (You have referred to my having provided financial information going back to 1998. As you can see, the financial information goes back to 1988.)

1.5 Should you wish to delve further back into history, you will find that the Trustees’ inability to trade other than at a loss, went back to the early years of the twentieth century. For example, the recital to the Alexandra Park and Palace Act 1903 stated that,

“And whereas the days on which gate money can be demanded have not provided the fund expected having to be fixed on days when the mass of people is engaged in labour and cannot attend in great numbers.”

The 1903 Act extended the Trustees’ powers to charge, but even that was inadequate. They had to return to Parliament for further powers in 1913, when the Alexandra Park and Palace Act 1913 extended the Trustees’ powers to take charges for admission to exhibitions, shows and displays.

- 1.6 The Trust Fund has long been exhausted and Haringey Council has been providing support out of its corporate funds for many years.
- 1.7 In the period up to July 1998, the Trustees considered other options in relation to the future of Alexandra Palace. Together with their officers, they worked on proposals that would lead to generation of surplus income, other than by holistic development.

It was clear at that time that in order to produce a balanced budget the trading company would need to generate an additional £5 million in income to secure an increase in covenanted profits of £1 million. Such increase was and remains unattainable in the context of the economic climate and the deteriorating building.

Notwithstanding various proposals were considered, including establishing a horse trotting track and an indoor real snow ski slope. An application was made to the Millenium Fund for grant funding and extensive searches were conducted in the European Union for financial support. Unfortunately, none of the proposals or funding applications turned out to be viable, realistic or successful and the Trustees eventually concluded that only holistic development was a viable option.

- 1.8 Haringey Council has made it plain that it is only willing to continue to provide revenue support for the Charity whilst it pursues the option of holistic development. There are potentially complex legal arguments as to whether Haringey Council is empowered to provide this continued funding. The short point here is that Haringey Council, as Trustee, may not be empowered to use corporate funds with which to support the Charity. It has not proved necessary to test this issue in the Courts whilst the Trustees have adopted the clear strategic objective of seeking holistic development but if they were to alter their strategy in that regard, it would be highly likely that the Council would have to seek such declaratory relief in relation to its legal powers to fund the Charity.

The following paragraphs relate to the second identified issue.

- 2.1 The Trustees ran an open tender procedure. There were two stages. The first invited general proposals, from which a shortlist was selected. The short listed parties were invited to work out detailed proposals and Firoka was selected following the evaluation of these detailed proposals. I have provided you with much material in this regard and, of course, further copies can be made available if necessary.
- 2.2 The process of negotiation with Firoka is an ongoing one. In this process, the Trustees are advised by a team including, in addition to Howard Kennedy, which has advised the Charity for many years,

two senior partners at Berwin Leighton Paisner, who advised on the tender and evaluation processes and are now advising on the Lease and Project Agreement documentation,

King Sturge, who have advised on property matters, including land values,

Abros, who have advised on financial aspects, including in particular, due diligence and

Broadway Malyon and previously Arup, who have provided the project manager and coordinator.

These advisers, together with the Charity's officers, are continuing negotiations in their endeavours to secure the most favourable terms to the Trustees can be concluded.

- 2.6 The Trustees have, as indicated above, received advice on the Lease terms and the rent, both from Berwin Leighton Paisner and King Sturge.
- 2.7 The report on value, under Section 36, was presented to the Board on 27 March 2006 and you have a copy. Messrs Berwin Leighton Paisner report from time to time on the process of negotiations on the draft Lease, their most recent report having been to the Board meeting that took place on 24 July, when the Board approved the draft terms and authorised its officers to give final approval once terms had been agreed.
- 2.8 The Trustees have considered the viability of proposals set out in the tender document. This consideration was given during the evaluation of the various proposals and was formally reported to and adopted by the Board at a special meeting on 30 January 2006. Again, I believe you have copies of the material documents.
- 2.9 The risks of the development have also been considered and various guarantee provisions have been incorporated into the draft documentation. I set out these provisions on page 4 of my letter to you dated 7 July.
- 2.10 The Trustees have conducted due diligence on the financial standing of the guarantor. Again, I refer you to pages 5 and 6 of my letter dated 7 July.
- 2.11 The Trustees have negotiated the best terms that they can for the guarantees offered.
- 2.12 The Trustees have also considered the consequences of future insolvency of a tenant after the development has been completed. The Trustees have granted step in rights to funders and the Trustees are able to forfeit in the event of insolvency. There are no break rights.
- 2.13 As indicated above, the Trustees have taken comprehensive advice throughout the negotiating and drafting process from Berwin Leighton Paisner and this firm continues to act for the Charity with regard to its affairs and this particular project in a more general sense.

As this letter is to stand as a single point of reference, it has been circulated in draft to the Charity's General Manager, Berwin Leighton Paisner, Abros, King Sturge and Broadway Malyan. Any comments and observations from these parties have been included in the final version.

I look forward to hearing from you.

Yours sincerely

IAIN HARRIS