

## Crandon Victoria

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**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

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**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*

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**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  
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Howard Kennedy, Solicitors

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01/06/2006

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**Mick George**

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**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*

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**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

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**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  
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21/02/2007

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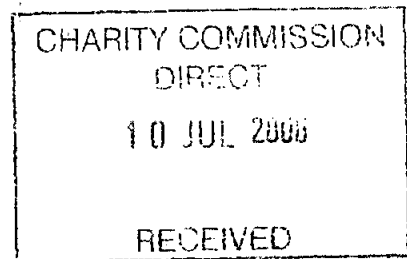
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Mrs V Crandon  
Charity Commission Direct  
PO Box 1227  
LIVERPOOL  
L69 3UG

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:**

<b>Company</b>	<b>Firoka (Heythrop Park) Ltd</b>	<b>Firoka (Kings Cross) Ltd</b>	<b>Firoka (City) Ltd</b>
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

<b>Company</b>	<b>Firoka (Heythrop Park) Ltd</b>	<b>Firoka (Kings Cross) Ltd</b>	<b>Firoka (City) Ltd</b>
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



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

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Mrs V Crandon  
Charity Commission Direct  
PO Box 1227  
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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.

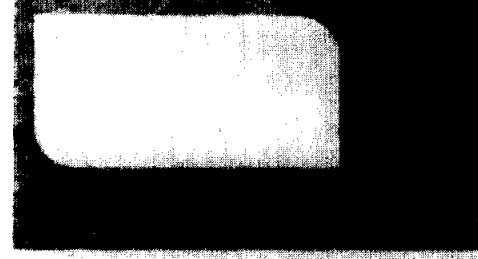
I assume that you will not be able to progress with regard to the Section 36 Order until the terms of the Lease have been finally agreed but given the desire of both Trustees and the proposed Lessee to move rapidly forward with this matter, I hope this early notification of the Board's decisions will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



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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 7<sup>th</sup> 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.