

Victoria Crandon

From: Victoria Crandon
Sent: 02 November 2006 14:16
To: 'Iain Harris'
Subject: Alex Park and Palace

Iain

I'm turning my attention to Alex Park and Palace today. Whilst reviewing the papers to pass to our legal team, I note that you haven't filled in the blanks on the draft scheme. Please can you fill these in and also let me have the minutes of the meeting at which the draft was discussed.

These points have come to light when looking through the papers this morning, it may be that other points arise later but I thought if I e.mail you asap you can get on to this in the meantime and it might speed the process up prior to publication.

Thank you

 Vicky

Email Message

HOWARD KENNEDY

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Our ref IMH1/014086.00049
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Date 6 November 2006
Please quote on all correspondence No. 1506

Dear Victoria

Alexandra Palace – Charity Commission

I refer to our conversation on Friday when you raised two initial points in response to my letter of 2 November sent by email late on Thursday afternoon.

I am attaching a compared version of the draft Lease which shows amendments since the version I sent you on 19 May.

Your second point concerned what I will refer to as the “delegation issue”. In your letter of 13 October you said, at the end of the pre-penultimate paragraph on the second page of your letter that:-

“To limit the risk of a trustee dispute, we need to seek confirmation that the Council agrees with the step taken by the Board.”

Following receipt of that letter I raised the issue with Terence Mitchison of Haringey Council's Legal Services department. I specifically asked him to confirm that the Corporation

“will accept the resolution of the Board and application as sufficient authority to enable it to affix the appropriate seal to any documentation that is eventually agreed.”

I attach a copy of my letter to him dated 16 October. Terence responded on 19 October. He confirmed that the Council had delegated to the Board all functions, powers and duties of the Council's trustee and that this gave the Board sufficient authority to make the decision that was being recommended. I attach a copy of Terence's letter to me.

On the point of advertising, as my letter of 27 October indicated we are hoping for an advertising deadline of 16 November which means we need to finalise the advertisements this week. I hope that will be possible.

Yours sincerely

IAIN HARRIS

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Mr Iain Harris
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Your Ref: IMH1/014086.49
Our Ref: VC/522431/A&O(T)

Date: 08 November 2006

Dear Iain

Alexandra Park and Palace (reg. no. 281991)

As background, I note we have been asked to publish the Order which it is intended will permit the execution of the lease to the Firoka special purpose vehicle. I note you have asked us to do this quickly and on Thursday of last week we were presented with a re-draft of the lease and development agreement. Our order is to be made pursuant to the Charities (Alexandra Park and Palace) Order 2004. The disposition will be made under the Scheme contained in the Charities (Alexandra Park and Palace) Order 2004. Section 36(9)(a) of the Charities Act 1993 therefore applies.

Given we wish to add directions to the Order, we now consider it is best made under section 26 of the Charities Act 1993 and in the matter of the 2004 scheme.

We have reviewed the Project Agreement and the Lease (the latter, latterly with the advantage of a red-line mark-up). Given we were satisfied that a lease on the terms previously provided would have been a proper exercise of the power under the 2004 Order, we need to understand how these changes affect the terms of the lease and the associated Project Agreement. Our review suggests these changes may be material both in determining whether the lease is in the interests of the Charity and whether it is within the scope of the 2004 Scheme. We will need a break-down of each change, whether it is just a drafting change or whether it has a material effect on the meaning of the documents. If a change has a material effect, we would like to know what that effect is and the consequences for the Charity. We would also like confirmation that, considering all the changes together, it is the continuing view of the trustees and their professional advisers that the lease is in the interests of the Charity.

On our initial review, changes that appear to need particular comment are:

Lease:

Clause 1 contains a definition for terrorism. This is used in the insurance provisions in Schedule 3. The Charity is to insure at the tenant's expense. Given many risks can be placed given a high enough premium, what is the practical effect of defining terrorism, especially given the definition and consequences of uninsured risk in paragraph 5?

Clause 3.4 provides a sophisticated repair provision. Essentially the tenant is to keep operational parts to the standard in the condition report, keep refurbished parts in repair and keep non-operational parts wind and watertight. For the operational parts, presumably the condition report specifies a better state of repair than simply wind and watertight? When the non-operational parts are to be maintained to the state of repair in the condition report, is this a better or worse state of repair than wind and watertight?

In clause 3.8, the requirement that xx

Why is shared occupation to be permitted under clause 3.10? What risks and benefits have been identified for the Charity?

In clause 3.11, what xx

In clause 3.12 the covenant relating to nuisance has been diluted to actual nuisance and carves out nuisance caused within the proper use in accordance with the lease. What risks to the remainder of the Park are posed by this dilution? What risks of impact on the Park are there arising from the proper uses? How does this impact on the Charity being able to pursue its objects?

In clause 3.20, what are the encumbrances and what risk is the Charity exposed to in compliance being secured by way of indemnity only?

In clause 3.22 why has the provision preventing the tenant from causing the Willis Organ to deteriorate been removed?

In clause 4.1.1, there is no longer a right of re-entry if the tenant ceases to be a single purpose company. What benefit to the Charity did that provision have? What is the consequence of it being removed?

What is the effect of the removal of clause 6.1.3?

Why has the requirement on the Guarantor to accept a new lease been removed? What protection is lost to the Charity?

In schedule 2, if xx

In schedule 2, what xx

Project Agreement:

Clause 3.3 xx

Turning to a different matter, as discussed on the telephone we have received a large number of representations already and requests for details of the Order when it is published. Because of this, and the fact that this matter is engaging public interest already we are proposing to send a Question and Answer sheet alongside the draft Order when it is requested in the publication stage of the process.

I am attaching a draft copy of this Question and Answer sheet for your comment. Please can you agree this document with the trustees and through the trustees, with the tenant, in order to ensure it does not disclose confidential material and that they agree its accuracy. When providing it as part