



Charity Commission

Question and Answer Sheet

Alexandra Park and Palace (reg. no. 281991)

1 What is this question and answer sheet about?

The Charity Commission is the independent regulator for charitable activity in England and Wales. (See www.charitycommission.gov.uk for further information).

We propose to make a legal document called an Order for Alexandra Park and Palace (charity reg. no. 281991). This question and answer sheet answers some questions and sets out why we need to make the Order. This is not a full explanation of our decision making process.

2 What is the background?

Alexandra Park and Palace in Wood Green in the London Borough of Haringey is a registered charity. The Palace is set in 196 acres of parkland and the whole entity comprises the charity's entire asset. The building is currently used as an event and exhibition centre.

The charity is administered by a body of trustees. They have responsibility for directing the affairs of the charity, and ensuring that it is solvent, well-run and delivering the charitable outcomes for which it has been set up.

After careful consideration of the options available, the trustees have decided to dispose of the Palace and its immediate surround. They advertised the property and completed a two-stage competition process. They now wish to grant a long lease to Firoka (Alexandra Palace) Limited. Firoka will develop the Palace and immediate surrounding area for uses consistent with the Alexandra Park and Palace Acts and Orders 1900-2004, which govern the charity.

3 Why are we making an Order for Alexandra Park and Palace?

In 2004, after giving public notice, we made a Scheme for the charity permitting the grant of a 125 year lease of the Palace and its immediate surround for the best rent reasonably obtainable. However, our consent is still needed before the lease can be granted.

The trustees therefore need our consent to grant the lease to Firoka, as required by the 2004 Scheme. The Order will provide this consent.

4 What information have the trustees provided us with?

The trustees have provided us with information to show that the lease to Firoka is in the interests of the charity and that it is permitted by the 2004 Scheme.

5 Is granting the lease in the interests of the charity?

The trustees have considered the financial situation of the charity. The charity has been making, and continues to make substantial losses year on year. To date these losses have been met by Haringey Council. The Council is concerned it should not be using the money available to provide Council services to subsidise a loss making charity. The lease therefore provides the prospect of a capital payment and a rent by which the Charity can continue its activities.

The lease furthers the objects of the charity by providing an opportunity for the charity to receive its own money with the aim of securing its financial position in the future.

6 What about the lease to CUFOS?

Part of the property is leased to the Community Use for the Old Station (CUFOS). The proposed lease to Firoka provides that Firoka takes the property subject to the terms of that lease, which expires in 2011. This will not affect the occupation or rights of CUFOS.

7 What is the 'publication period'?

The Charity Commission's Order will have public notice given to it for a minimum period of a month. During this time members of the public are able to make representations about the Order to us for consideration. We are publishing the draft Order in a number of places to ensure it is available for public comment. These places include the Times newspaper, our website, the Alexandra Palace web site, local London papers including the Hampstead & Highgate Express and the Muswell Hill Journal and also on notice boards at the Palace and Park. The Order will be published the last week in November and representations should be made by noon on Friday 5th January 2007.

8 What will happen to those representations received by the Charity Commission?

An officer who has not dealt with this charity will consider all the representations made and will decide if we should go ahead and make the Order and/or if changes should be made to the Order. The final decision on whether to make the Order will take account of all the information, evidence and arguments received.

9 How do I make representations about this Order?

You can send representations about this Order by post or by e.mail to:

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

e.mail to: enquiries@charitycommission.gsi.gov.uk

Please quote reference number 522431. They must be received by noon on Friday 5 January 2007.

10 When will I hear from you?

If we need more information we will ask you for it. Otherwise we will let you know when a final decision has been made.

**ORDER OF
THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES**

To authorise the trustees to enter into a lease
under the powers given in the Charities (Alexandra Park and Palace) Order 2004
and section 26 of the Charities Act 1993

dated

XXXX

for the charity known as

ALEXANDRA PARK AND PALACE (281991)

in the

Borough of Haringey, London

ORDER

1 In this Order:

"the lease" means a lease substantially in the form of the draft provided to the Charity Commission on 2 November 2006 in respect of land at Alexandra Palace for a term of 125 years and between the Mayor and Burgesses of the London Borough of Haringey, Firoka (Alexandra Palace) Limited and Firoka (Kings Cross) Limited.

"the charity" means the charity identified at the beginning of this Order.

"the trustees" means the trustees of the charity acting under this Order.

"the project agreement" means the project agreement substantially in the form of the draft provided to the Charity Commission on 2 November 2006.

"the tenant" means Firoka (Alexandra Palace) Limited.

"the governing documents" mean the Alexandra Park and Palace Acts 1900- 1985, the Alexandra Park and Palace Order 1966 and the Charities (Alexandra Park and Palace) Order 2004.

2 The Commissioners being satisfied that the grant of the lease will be within the power to lease granted by the Charities (Alexandra Park and Palace) Order 2004, that the grant of the lease represents a proper exercise of that power, and that the grant is expedient in the interests of the charity, make the following Order.

3 The trustees may, subject to compliance with the directions given in clauses 4 and 5 of this Order, grant the lease to Firoka (Alexandra Palace) Limited within six months of the date of this Order.

4 (1) The trustees shall throughout the term of the lease, frequently and regularly monitor and review the performance by the tenant of the covenants contained in the lease and shall, before the execution of the lease, devise proper procedures for doing so.

(2) These procedures shall address in particular, covenants which restrict the use of the leased premises to uses consistent with the governing documents and covenants preventing the use of the leased premises interfering with the use of the charity's retained land.

Contd.

- 5 (1) The trustees shall, at the same time as granting the lease, enter into the project agreement with Firoka (Alexandra Palace) Limited.
- (2) The project agreement must identify the development works to be carried out in suitably defined phases with means to identify the performance (or non performance) of development obligations and the completion of each phase.
- (3) The project agreement shall also include the valid guarantee of a suitably secure guarantor in respect of those obligations and any cap on the guarantee shall not, in the trustees' reasonable opinion based on appropriate professional advice, materially prejudice the charity given the risks of non-performance or part performance of each phase and the risk of cost over-runs.

-- E N D --

Hornsey Historical Society

The Old Schoolhouse
136 Tottenham Lane

Hornsey

LONDON N8 7EL

Registered charity no. 274424

From the Conservation Officer

HYPERLINK <mailto:joc@cix.co.uk> joc@cix.co.uk

By e-mail and post

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

4 January 2007

Dear Mrs Crandon

Draft Order and Draft Lease of land belonging to Alexandra Palace and Park charitable trust

Our substantive objections to this Order are contained (and their background) in the letter already sent to you (3 November 2006). The letter raised certain specific queries and issues. Unfortunately you chose not to reply to these.

Our argument boils down to this: the commission would be acting outside its powers in making this Order because as drafted it changes the purposes of this charity.

Only in limited, exceptional circumstances can such a change-of-purpose, s 13 scheme be made, as has already been confirmed to the statutory advisory committee in a letter from the commission to the chair dated 17 July 1998, copied to its then members including myself. I would refer you to this letter. Instead, Parliament only granted a s 17 scheme which sets out the powers under which the commissioners may make any order for a lease. The s 17 of the Charities Act procedure only allows Orders for minor, administrative, non-contentious changes. On this basis Parliament's Standing Committees on Statutory Instruments allowed the draft SI for the s 17 scheme to go before the House.

It was to allow non-contentious, merely administrative Orders.

I believe you have had to date 200 objections. Articles have appeared in the national Press, and on a networked BBC programme fears were expressed. The constituency MP has put down an EDM.

We would be interested in the commission's definition of "non-contentious".

Also I would again refer you to the Hansard report of the debate on the s. 17 scheme and the undertakings given by the Minister in reply to concerns and fears, made to her by MPs during the debate:

Column Number: 020

(Fiona MacTaggart:)

The scheme does not amend the charity's purposes. The trustees have a legal responsibility to ensure that those purposes are achieved, and the charity commissioners, as the regulatory body, will hold them to that. The scheme does not provide for the palace to be sold for commercial development; it [merely] provides the power to lease it and the immediate surrounding area for 125 years.

The charity's purposes *are* being changed by your order. The palace *is* to be sold for commercial development.

The objects and purposes of the charity being changed, are set out in the 1900 Act, s 17: "the park palace and other lands shall be available for the free use and recreation of the public for ever" – it does not say, you will notice, "the park *or* palace".

The order refers to the proposed lease. Although neither the terms of this lease, nor a plan of the exact land to be leased, have been included as an appendix to the published draft order, so making this "consultation" meaningless (because one cannot comment on something one is not allowed to see), the commission knows, as we do, that the area of the land in the proposed lease to be reserved for the purposes of this charity is in reality confined to the theatre and a tiny corner for a museum.

(Please take this letter as also constituting our formal request for sight of the lease and of all correspondence between the commission and the trustee about this order under the Freedom of Information Act.)

In particular the south-east wing under all the previous amending acts has to be used for charitable purposes and the 1985 Act states that this shall be connected with its world-famous television history, but the order together with the lease purport to change that purpose and those provisions. We are sorry but we repeat: that is *ultra vires* the commission's powers under the s 17 scheme. Under the existing charity law in general, and the 1985 Act in particular, this area *must* properly remain available for the free use of the public to see for themselves the actual studios where television was born and developed, the costs of this educational activity to be provided from the profits of commercial activities permitted elsewhere in the building. They should be adequate for the purpose and further grants from English Heritage and others and donations should be available for repairs and restoration as the museum/exhibition is charitable. This would not be the case with a commercial activity there. Neither will the tax advantage that the

charity enjoys be available – a considerable sum.

The commission has provided a question and answer section. It gives the impression that the trusts have failed and the charity's endowment is insufficient. That is untrue. If the present trustee has managed the charity incompetently that is no fault of the endowment. As a former member of the statutory advisory committee I know from correspondence that the trust's solicitor tried to argue that the trusts had failed and to apply for a *cy-pres* scheme. I will write separately to the commission about the statements made to you by the solicitor. The point is that he failed to prove, and the commission did not accept, that the endowment was insufficient, except that in the limited administrative matter of the term of the leases.

The commission should have ensured that this order was advertised to all the beneficiaries of the charity. The beneficiaries include the people of London, or at least of north London. Arguably the beneficiaries are the national public. We, and others, know that this order has not been so advertised.

This is property belonging to the public being disposed of by stealth. It appears that the trustee and the commission hoped that no-one would notice or realize the significance of the proposed change of purpose. We are sorry to disappoint but we have noticed it.

Yours sincerely

J O'Callaghan

For HHS

Return to Conservation

Hornsey Historical Society

The Old Schoolhouse
136 Tottenham Lane
Hornsey
LONDON N8 7EL
Registered charity no. 274424

From the Conservation Officer
joc@cix.co.uk

FOR THE ATTENTION OF VICTORIA CRANDON
The Senior Caseworker for Alexandra Park and Palace charitable trust
Charity Commission
Woodfield House
Tangier
Taunton, Somerset, TA1 4BL

3 November 2006

Dear Madam

Proposed lease for Alexandra Palace

Further to our telephone conversation I am faxing as promised our letter.

Hornsey Historical Society is an educational charity whose members study, research and conserve the historical events of Hornsey, Wood Green and surrounding areas. We have in the past arranged many activities, for the benefit of members and public, at Alexandra Palace, such as tours and publications, and we were instrumental in this important building being listed as of special historical interest (Grade II) by the Department of the Environment. The writer represented the Society as member of the statutory Advisory Committee when preliminary and ominous moves were first being made to apply for schemes to alter the governing statutes, but, co-incidentally, the council then decided that we no longer qualified and removed our membership.

On behalf of our General Committee I already wrote to the commission on behalf of the society stating our grave concerns about the proposed Parliamentary Scheme. I wrote on January 8 2001 stating the reasons for our concern and you will have this on file, so I will not rehearse them again in detail.

However, we have been advised of some details of the lease now being proposed pursuant to the Scheme and it is evident that there is grave doubt as to whether undertakings given in the Debate about the scheme by the Minister, including assurances as to the preservation of the historic structures and areas, are being honoured. My committee have therefore again asked me to write. However, it is self-evident that we

cannot object in detail to the scheme and the lease *until we have sight of both*, and we trust that you will direct that this be done, in line with the undertakings given in Parliament about the rights of objectors.

We remind you that Parliament and public were assured that the scheme preserved the charitable objects and uses **and a cy-pres scheme was not justified** : " **the trustees may not grant any such lease which permits a use otherwise than is consistent with the said purposes**". While I was a member of the Advisory committee I saw correspondence showing the council were unsuccessful in persuading the commission that the trusts had failed as there was no evidence for this. In fact showed evidence that contrary to the council's assertions the pre-1967 trustees' accounts had many times showed surpluses. Therefore the trusts declared in 1900 remain. The case which defined these was reported in the Times Law Reports as *Alexandra Park Trustees and another v Haringey London Borough and Others, 1967*. The judge found that the subsequent enabling acts did not affect the trust declared in 1900, and that this trust was one which " ***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 educational purposes.***" Like all charities, all profits from secondary commercial activities (after deduction of administration and other expenses), must be allocated to those primary charitable purposes.

1. An assurance was duly given by the minister, Fiona Mactaggart, during the parliamentary debate on 14 January 2004, to the MPs (Simon Hughes and Don Foster) who had called the debate, that the charity was not being abolished or the educational charitable purposes removed. " ***The scheme does not amend the charity's purposes. The trustees have a legal responsibility to ensure that those purposes are achieved, and the charity commissioners, as the regulatory body, will hold them to that. The scheme does not provide for the palace to be sold for commercial development*** " [Hansard at col 020]
2. Yet according to the coloured plan we now see in the draft lease prepared by Aukett Fitzroy Robinson, the area of the palace reserved for primary charitable purposes will be confined to the theatre and a tiny area in a corner for a TV museum. In effect, and contrary to the Minister's undertaking above, the proposed lease envisages perhaps 90% of the area of the Palace, the charity's primary asset, being alienated for purely commercial activities. This is so disproportionate that in effect the charity, so far as the Palace is concerned, will have ceased to operate. It is no defence to assert that rent will be applied to the Park. *Public access to the palace* for the 1900 purposes has always been one of the essential charitable objects.
3. Linked with this and of profound concern to us is the absence of any provision in the lease that the internal layout of the 1936 studios A and B, from which the world's first regular television programmes were transmitted, and the linking corridor and dressing-rooms, all of which still survive, is to be protected and preserved, as normal in an important listed building. Indeed the developer has specifically stated that they may be gutted (Muswell Hill Times 19.10.2006 p1) In fact, the plan shows a "museum" in a different area of the building from the existing studios, and they have disappeared. Mr Firoka, or his advisers, does not seem to know or care about the implications and duties of owning and managing a listed

34

building.

4. This is totally unacceptable for any part of such a nationally important listed building whose internal structure defines and preserves the special historical interest of the building and was a material reason for its listing. It is not acceptable that the trustee and developer leave this to the planning stage. It is universal good practice when drawing up an agreement with a developer concerning an important listed building that the developer must agree to respect and preserve those areas and they are usually defined by *previous commissioning of a detailed conservation brief* from an authoritative independent source. This essential first stage has already been done in the case of Hornsey Town Hall. *Astonishingly, the council have refused to do this in the case of the Palace. They must be challenged on this.*
5. A sop is made that a small area is to be offered to the BBC or other not-for-profit organization to take on the charitable purposes and establish a museum, but far from providing funds to them for this in order for the public to have access on a free or not-for-profit basis, the developers it appears, want to charge such body, *at commercial rates*, for carrying out these same charitable purposes for them!
6. An important point has been made to the undersigned by other possible bidders. If the lease will in practice be unrestricted, in charitable and planning terms, the asset is being acquired for far below its open-market commercial value. The lease's final terms seem to have been dictated by, and various restrictions stealthily eroded by, the developer, whereas it was originally advertised under the EC regulations (as it legally had to be), when Firoka was selected subject to all these restrictions.

In short, we believe the intention seems to be to ignore the undertakings given in Parliament and the 1900 trusts and this is not acceptable. This scheme would lead to a situation in which our own objectives, together with those of other charities associated with the Palace, would be rendered ineffective in relation to it, and some of these other charities would be obliged to dissolve. We would question whether the scheme and lease represents "best value" for the public money and effort already invested in the charity, both in 1900 by the neighbouring authorities and Middlesex County Council, and since its ownership and redevelopment by Haringey ratepayers. If the commercial uses allowed are disproportionate to, and the income of any activities described in the lease, is not being applied for, "*purposes which are wholly charitable*" and educational, as the 1967 case established, then the lease cannot be lawful.

We would ask you to urgently reconsider the Scheme, the lease, and their implications, and we appeal to you to allow a proper period and method of consultation with this charity and other relevant parties. Is the commission really content that no charitable activities will effectively be left within a building which was acquired for and should be devoted to them?

Should the commission decide not to intervene to address our concerns, please could you advise what formal appeal procedures against the commission's decision are then available to us.

I am copying this to Mr Simon Hughes because, as the Hansard report shows, we have

35

been obliged to him and Mr Foster for putting many of the points and objections about which we were concerned, to the Minister in the debate (the local MP was not allowed to take part in the debate). Equally, we are keenly aware that the Mayor of London and Nicky Gavron, Deputy Mayor, take a great interest in the future of Alexandra Palace as a London landmark, but have so far had no power to intervene, despite the Middlesex County Council being founder trustees of the charity. We will always be grateful that Ms Gavron, as the then Chair of the local borough Planning Committee, intervened more than once at our behest to decisively prevent historic features of the Palace being altered or destroyed - most importantly the mast and surviving features of the television station at a time when English Heritage were still considering the application for Listing which we made and which the Palace management opposed.

Yours faithfully

Jacob O'Callaghan

Conservation Officer

cc Sir Neil Cossons, Chairman, English Heritage
Mr Ken Livingstone, Mayor of London
Ms Nicky Gavron, Deputy Mayor of London
Lynne Featherstone MP
Simon Hughes MP

36

4a Bishopswood Road
Highgate
London N6 4NY

joc@cix.co.uk

By e-mail and post

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

5 January 2007

Dear Mrs Crandon

Draft Order and Draft Lease of land belonging to Alexandra Palace and Park charitable trust

I promised that I would write further to you. I am writing the following from my personal experience and knowledge as a former member of the statutory Advisory Committee to the trustee of Alexandra Palace and Park.

Don Foster MP, Simon Hughes MP and other MPs insisted on the statutory instrument (giving the commission power to grant an order for a 125-year lease) being debated in Committee.

They pointed out, as I do to you now, that there were grave doubts about the information provided to the commission and Parliament about the charity's financial history in order to procure the scheme (see below).

Also that the commission, under their own operational guidelines, should have considered taking the trusteeship from the council as single trustee (effectively a political partisan charity trusteeship).

The commission has provided a question and answer section on the Order. It gives the impression that the trusts have failed and the charity's endowment is insufficient. That is untrue. If the present trustee has managed the charity incompetently that is no fault of the endowment. This information is partly based on untrue statements made by the trust's solicitor:

In 1997 the statutory advisory committee of which I was then a member were shown correspondence showing that the trust's solicitor, Iain Harris of Howard Kennedy (who in my experience has recently seemed to me to be acting, with the General Manager, Mr Holder, solely for the majority group members and their policies – see below) tried to argue that the trusts had failed and wanted to apply for a *cy-pres* scheme (permitting change of the purposes). He failed to prove, and the commission did not accept, that the endowment was insufficient, except that in the limited administrative matter of the term of the leases.

However Howard Kennedy has continued to report, falsely, to the commission and the council that the charity has "never in living memory balanced its books". I provided the SAC with official copies of audited trust accounts conclusively proving that this statement was untrue, because the accounts showed the charity had many times in living memory and as recently as the 90's carried forward substantial surpluses on its annual balance sheet. I was very shocked to find therefore Mr Harris continued to repeat this utterly false and misleading statement to the council and its committees, when he knew it to be false (when they were considering the process that led to this Order); and, presumably, to the commission.

The point was that if it was viable under the old trusteeship of a consortium of local north London councils, it was potentially still viable and the proposed sale could be seen as a party politically-biased attempt to conceal the fact that any present continued losses are in reality largely due to incompetent and possibly corrupt trusteeship.

Effectively, the only way to receive full legal advice, co-operation and information from the solicitor to the trust and the General Manager, has been a member of the majority political party on Haringey council (and I should here declare that I am not a member of any political party).

The other factor I discovered as a member of the SAC was that the council as single trustee was abusing its power to be monopoly provider of administrative and other services, effectively charging many times the going market rate for these services – so simultaneously profiting by its trusteeship, contrary to a very old principle of trust law, and tipping the charity's balances into the red. The charity's auditor, Pesh Framjee, many times warned the charity trustees about this. I can provide chapter and verse about this if required.

I would submit that the above two abuses are inescapable dangers and temptations when a large charity has a single local government corporation as its sole trustee, and Parliament should in my view legislate that local councils can no longer ever become single trustees.

This has not led to effective and efficient governance of this charity.

I have made or am making all these points to Lynne Featherstone MP in connection with the Early Day Motion.

I am copying this letter to Howard Kennedy. I do not expect to receive any writs, and the commission may draw its own conclusions that they know that what I have stated in this letter is true. Despite the cynicism endemic in public life at present over the value of truth, I would expect the commissioners to want to take some action over it.

Yours sincerely

J O'Callaghan

**RESPONSE of LOCAL RESIDENT, PETER THOMPSON of
9 Hillfield Park Muswell Hill N10 3QT**

THE ORDER PROPOSED IN RESPECT OF ALEXANDRA PALACE

I am responding to the consultation on the draft Order to authorise the trustees of Alexandra Palace to grant Firoka a lease of Alexandra Palace.

1 Preliminary The Palace has been visited by the public for over 100 years: and it has a history of being used for theatre, concerts and exhibitions, as well as being the cradle of television broadcasting. It should be possible to incorporate an hotel into the structure without detracting from the benefits currently enjoyed by the public. Presumably the aims of the scheme are to see that a compromise is achieved between the commercial goals of the lessees and the charitable aspirations of the lessor. In this way the trustees can dispose of a high maintenance asset but the public can still enjoy its traditional attractions. So far so good.

2 My concerns My concerns about the Order are focused on compliance and enforcement. I appreciate that the lease contains covenants, that observance will be monitored and that there will also be a "project agreement" underwritten by a guarantor. But what if the lessees decide not carry out the work after all? It might make better sense, commercially, simply to sit tight and do nothing and then either sell on at a profit or ask to be released from irksome covenants as the price for a fresh promise to honour the project agreement. Their most powerful threat might be to hand it all back.

3 Crucial importance of the terms of the lease which have not been disclosed The commercial priorities of the lessees are clear. Why else should they be so secretive about the terms of the lease? And why else should they shy away from any kind of meeting with residents to explain their intentions? They have been invited repeatedly to a meeting (public or private, their place or ours) to explain their intentions and they have always been too busy. We have been left in the dark and must conclude that they want to keep it that way.

4 So the questions I would like to see answered are

- 1 Are the lessees paying a substantial sum up front, as a premium for the purchase of the lease? If so, then that will provide a strong disincentive to inaction and make it much less likely that they will wish to hand the lease back if they can't make a profit out of it.
- 2 How will the "guarantee" work if the lessees simply go slow on the project agreement, or perhaps find excuses for not starting? One knows how easily large building contracts drift into arbitration and lawyers' fees. Wembley Stadium anybody (?)
- 3 Finally, in what circumstances will the lessor be entitled to forfeit the lease? A flagrant breach of covenant would provide solid grounds. But what if there is a failure, or refusal, to comply with the project agreement. Is this tied in with the lease? Or can the lessees break the agreement but keep the lease and sell it on, notwithstanding?

Without satisfactory answers to these questions the Order should not be made

Because the lessees have refused to let the public in on the terms of the lease and the project agreement I do know whether there are satisfactory answers to these questions. But I suspect not; and I urge the Charity Commission to proceed no further with this Order unless there are clear and positive answers to all three.

Peter Thompson QC

2 January 2007