

Your ref
Our ref IMH1/014086.00049
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14 September 2006

Dear Victoria

Alexandra Park and Palace (Registration Number 281991)

Thank you for your letter of 8 September.

I appreciate the priority you continue to afford to this matter, notwithstanding its complex nature, having regard to the timescale to which the parties are seeking to work.

As was the case in respect of my letter of 2 August, your letter of 8 September has been copied to the team advisers and this response is sent with the benefit of their input. I should, perhaps, add that whilst I recognise the necessity for a proper audit trail in regard to the decision making process, this correspondence remains confidential as between the Commission and the Charity's professional advisers.

Without intending to be critical, whilst your response is lengthy, I do not believe the key areas where you have asked for further information are many. What I propose, therefore, is to make some observations in response to your requests and then deal with the substantive issue. My reading of the substantive issue is that you would like information on the other possibilities considered by the Trustees.

I will deal with the general points under the following numbered paragraph:-

1. **Spatial Area**

A copy of the Lease plan will, of course, be provided once the documentation has been agreed. The Charity's advisers will ensure that this contains no land outside the land on the plan annexed to the Scheme.

2. **Use**

Forgive the observation, but in the second paragraph under this heading you refer to the 1913 Act. That is not material for present purposes because all it did was to extend the Trustees' powers. What are generally referred to as the objects of the Charity appear in the tailpiece to paragraph 17 of Schedule 3 to the 1985 Act, which was originally Section 17 of the 1900 Act.

In the third paragraph of your letter under this heading you say that

"facilities at the Palace will not be provided on a charitable basis".

This statement does not seem material to me or to take the issue forward. If you will again forgive the observation, it seems to mix the concepts of "not charging" and charity.

As the Court of Appeal decided in the ski slope case, the fact that the trustees have powers to charge has no bearing upon the charitable status. Indeed, it is only by charging that the trustees are able to provide the recreational facilities desired and in accordance with the objects of the Charity. Put succinctly, charitable does not mean without charge.

At the foot of page 2 of your letter you have asked for my comments on your observation that the trustees can flexibly respond to changing uses and beneficiary needs by monitoring compliance with the tenant's covenant not to be a nuisance or do anything which would infringe the provisions of the legislation.

The trustees have serious regard to the ongoing nature of their obligations as trustees of the Charity. They are presently considering how best to meet these obligations and the level and range of officers that they will need to employ for this purpose.

The trustees consider that there are two elements of continuing involvement:-

- (a) What I classify in the broadest sense as the "charity" elements. This covers governance issues, compliance with rules relating to accounts and the overall strategy and objectives of the Charity; and
- (b) Issues arising out of the trustees' role as landlord of Firoka under the Lease and Project Agreement.

The issue of the continuing role and functions is presently in the nature of "work in progress", but I hope it is sufficient for me to emphasise the seriousness with which the trustees view their continuing obligations.

3. Is the granting of the Lease expedient in the interests of the Charity and furtherance of its objects?

You suggest at the foot of page 3 that it cannot be said that the Lease of the Palace directly furthers the objects.

I am not sure that I would agree with this statement. The Lease contains specific development obligations which will enable an improvement of the recreational facilities provided by the trustees in accordance with the objects of the Charity.

Perhaps semantically the Lease does not further the objects, but the obligations the Lease imposes on the Lessee will further the objects of the Charity.

4. Risk – Development Agreement Obligations

You ask for confirmation that the advice received includes that of a quantity surveyor. If that request relates to the advice to Firoka the bid document records that Ridge has advised Firoka. As there indicated Ridge's expertise includes "Ridge Project Managers, Quantity Surveyors and M & E Service Engineers".

As regards the Trustees they have received advice on project costs from King Sturge. It carried out a very comprehensive survey in three parts:-

1. Of the state of the building and the investment required to bring it to a "core" condition for redevelopment
2. The likely costs to create alternative uses and
3. A review of the bidders figures for development costs.

The Trustees professional advisory team included the quantity surveyors Robinson Low Francis.

5. Credentials of Tenant

At the foot of page 5, you have stated that Firoka's professional team appears to be largely Oxford based. You have asked me how the team was selected, on what basis and what considerations were undertaken.

First and foremost, I have to make the point that Firoka selected its own professional team. This was not a matter for the Trustees and I have no knowledge or information as to its selection process.

That said, the statement that it appears to be "largely Oxford based" does not seem to me entirely correct.

The architects, Messrs Aukett Fitzroy Robinson, is a plc company, which I believe is quoted on AIM. It is based in London and has offices in major European cities, albeit that I can find no mention of Oxford amongst them.

Gerald Eve has two London offices – one of them is immediately adjacent to one of my firm's premises. It has a network of offices in the UK, although again, no presence in Oxford.

Ridge has a number of offices in England, two of which are in Oxford.

JPPC Planning Consultancy does appear to be based in Oxford.

Lewis Silkin's main office is in the City of London, with an additional office in Oxford.

I am not sure if I can say anything more about the professional advisers and I hope that I have allayed any concerns you may have in this regard.

I come now to my substantive response.

6. Have the Trustees considered all other options in respect of the palace?

As I have indicated earlier in this letter, this seems to be the substantive matter with which you are concerned and upon which you require further information.

You have previously raised this question and I had provided information in reply on page 4 of my letter dated 2 August.

In the third paragraph, under that heading, I said,

"It was not my understanding that the basis of the 2004 Order was that the Trustees would consider "all other options"."

You have interpreted that sentence as amounting to a statement that

"the Council has not considered all other possibilities.",

although you have referred to paragraph 1.7 of my letter, in which I said that the Trustees considered other options in the period up to July 1998.

There has not been any stage during the last 17 years, when I have been advising the Trustees, that they have not given, or been giving consideration to other options.

The other options have fallen into two main elements. The first element has constituted specific proposals and projects in relation to identified areas. I set out below, by reference to the relevant year, various projects and options that have been considered:

1990 - Powerhouse

Following the intervention of the Commission into a proposed lease in 1990, a concept of outsourcing the management of the facility was proposed. This fell once it was established that institutional funders would not support the proposal which they did not think viable.

1990 - North London Theatre Trust

The NLTT proposed the use of the south east wing as a replacement theatre school. The Trustees entered into a Building Agreement with the NLTT. However the NLTT was unable to raise sufficient funds for the proposed development and the costs associated with the conversion were prohibitive. The Agreement was eventually determined.

1995 - Crystal Mountain Developments

This proposal was formulated in 1995 and was the subject of an early Millennium Commission application for funding. Significant sums were expended by the charity on developing the proposal which included hotel, media centre, 24 screen multi-plex cinema, various bars and restaurants together with a real snow ski slope. The Millennium Commission rejected the application in 1996.

2000 - Topsy Turvy World

Considered plans for a children's soft play arena in the east entrance were formulated and presented to the Trustee Board in October 2000. The Trustees subsequently received advice from Strutt & Parker that £20,000 needed to be spent on works to the roof to make it watertight. The Trustees approved the proposal only to be advised that Topsy Turvy World would not be proceeding because its backers did not think it financially viable having regard to the required level of infrastructure expenditure.

2001 - McDonalds

A proposal was forthcoming from the fast food chain for a standard burger bar and drive through facility at the south east corner of the building. It withdrew the proposal because of the estimated likely costs to be incurred both from refurbishment and fitting the concept into a listed building.

2003 - The Peoples Palace

This concept was a tripartite approach to developing a television heritage based facility in the south east wing of the Palace and centred on the original television studios. The parties were APP Trust, Middlesex University and BBC.

Middlesex University were on early casualty and dropped out for financial reasons. The BBC has now stated publicly that it will not invest in the concept but is prepared to facilitate. The trustees do not have access to funding.

A pan-media industry approach was suggested and OFCOM facilitated a conference in late 2004 where options for use, potential interest and funding sources could be explored. Limited media interest has been identified and the concept will be re-visited as part of the overall development plan.

2003 - Theatre de Complicite

A proposal was forthcoming to bring the theatre into use for a season of performances. The aim was to kick-start refurbishment in the north east wing through the lasting legacy of partial refurbishment of the auditorium. The costs for providing the facilities and implementing a modern public safety regime on a piecemeal basis proved too substantial and the proposal was dropped.

2004 - 2012 Ltd.

There were proposals to utilise Alexandra Palace for fencing as part of the Olympic facility in 2012. However this was dropped once a review of the overall bid resulted in a more compact facility being required. There are now no longer any intentions related to 2012.

The second element of the "other options" considered has been that of expanding the business and increasing rental receipts.

Expanding the Business

The charity, in conjunction with its trading company (APTL), has looked at the potential for increasing the level of commercial activity undertaken. This would have the effect of increasing the covenanted profit for the charity.

APTL, converts its income into profit at around 20%. This means that for every £5m income into APTL the charity receives around £1m in covenanted profit. The charity would need around a further £1.3 m simply to break even on its revenue budget.

This sum translates into £6.5m **additional** business. Such a turnover increase in an intensely competitive business is unlikely in the short term and would be restricted by the availability of space within the venue.

Maximising Lease Income

The Trustees have sought to maximise lease income over the years. The income generated is limited by the uses to which the land may be put and in any event the limitations on the area of open space able to be leased and imposed by the 1985 Act are now reached.


As you have observed towards the close of your letter, it would indeed be a Herculean task for me to go into comprehensive details of all the options considered by the Trustees since 1989. However, I hope the above selection, and it is only a selection, gives you a flavour of the way in which the Trustees have had and continue to have, regard to possible alternative options.

I hope this now provides you with the necessary information, to enable you to agree that a Section 36 Order should be made and publish the draft Order.

It would be most helpful to further conduct, having particular regard to the fact that the Trustee Board will need to convene a special meeting, if you could give me the earliest possible indication as to timescale.

Yours sincerely

IAIN HARRIS



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

Date: 03 October 2006

Mr Iain Harris
Howard Kennedy
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Dear Iain

Alexandra Park and Palace (reg. no. 291991)

We spoke this morning. Thank you for your letter of 14th September. The additional information you have supplied is sufficient to show that the trustees have seriously considered a full range of plausible options in respect of securing the future viability of the Palace before settling on holistic development and then advertising the proposal to develop in order to seek proposals from as broad a range of development partners as possible. We do though need to pursue answers we do not yet have.

Spatial area

I note that you will ensure the plan in the lease does not include additional land and we will be provided with a copy of this. We look forward to receiving a copy of the plan together with a copy of the advice confirming its conformity with the terms of the scheme.

Use

It is important for the Commission and the trustees to have a common understanding of why the grant of the lease is permitted by the scheme. It is not only important in being able to explain the reasons for granting permission for the lease and the trustees' justification for granting the lease, but also for ensuring the argument is as sound as we believe. You commented that the Commission might be confused as to whether a charity can charge for its services. We do not believe that we are drawing any distinction on the basis of charging. Charities can and often do charge for services provided within their objects in order to recover costs. The purpose of the charge is to further the objects. The proposition here is rather different. A long lease is being granted to a non-charitable organisation. Its purposes are not charitable but instead are to make profit. When it charges, the purpose of the charge will not be to fulfil charitable objects but to create profit according to the objects clause of its memorandum of association. By comparison, the act of granting the lease to the developer is within the charitable objects of the trustees because they are turning the property to account, for the purpose of using the income for their charitable purposes.

Risk – Development obligations

Thank you for your confirmation that the trustees sought their own professional advice in respect of the figures for development costs. Our concern was the extent to which the trustees had sought their own advice in respect of the costings. Presumably in assessing whether the project costs were realistic, King Sturge also advised on the risks of project overspends. Presumably that advice informed the trustees' negotiations in respect of the appropriate level of guarantee to be sought at each stage of the lease and development obligations? Perhaps you can confirm?

Credentials of tenant

We had done some basic investigation of the identity of the Firoka team of professional advisers. The success of the lease and management of the trustees' risk depends to a significant extent on the effectiveness of the tenant/developer team. We had assumed the trustees would have explored the issue with the developer in order to get a picture of experience and track record and perhaps done some of their own research. We also wondered whether the fact that a number of that team had bases in Oxford might be down to previous experience of the team with a project in the Oxford area. If so, we wondered whether the trustees had found anything out about that in order to confirm what might be good evidence of the credentials of the team working together. Presumably the trustees took some steps to evaluate the Firoka team? (Apologies if you have already provided this information, I couldn't find anything on our file). Perhaps you can confirm what steps were taken? If they were only limited steps, perhaps you could let us have an explanation so we can understand why?

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

Thank you for your summary of a selection of the broad scope of projects and options which have been considered in respect of the future of the Palace during your involvement. We did not want your answer to our question about other options to be misinterpreted as you have suggested, hence clarified what we were after. The options considered embrace proposals to consider steps to increase the generation of revenue through leasing parts and expanding commercial activity, small scale development projects, large scale development projects, outsourcing management and the culmination being holistic development leading to the competitive tendering process.

Your selection represents examples from along the scale of a comprehensive range of options with, where appropriate, a range of development partners. Demonstrating that the trustees

considered many possibilities from along that scale is sufficient for our purposes as we had not intended to set an impossible target.

The Scheme

The Order will take the form of a Scheme and will be made subject to the publication and representations procedure described in section 20 of the Charities Act 1993.

I will today draft the Scheme and shortly provide you with a copy of the draft at this stage to try to move matters along as quickly as possible. (I know I did say on the phone that I would forward this draft to you today, but our lawyer dealing with this matter is on leave this week, so I hope to get the draft to you next week).

We are very grateful for the helpful information provided. We have covered a great deal of ground and only two matters which we have raised remain outstanding. First, we would like confirmation that the advice of King Sturge provided to the Charity in respect of the Firoka proposal addressed the risk of phases of development going over budget. Second, we would be grateful for an indication of the steps taken by the Trustees in order to assess the credentials of the Developer's team.

Although these items are outstanding, in order to allow matters to be pressed ahead, I will shortly send you a copy of the draft Scheme for the trustees to consider. We intend to make the document as informative as possible and to direct various risk managing steps be taken. Do let us know if the trustees have any comments on the draft. I also enclose an application for the Scheme. Please return it to us once the terms of the Scheme have been agreed.

Yours sincerely

Victoria Crandon

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Enc - Scheme application form

Keep up to date - Visit our website: www.charitycommission.gov.uk

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5 October 2006

Dear Victoria

Alexandra Park and Palace

Thank you for your letter of 3 October received subsequent to our telephone conversation that morning.

This is something of a preliminary reply. I am anxious to work within a tight timetable and I propose to record the steps that will be taken as per our conversation. I also want to tell you what I am doing to put in train the securing of responses dealing with the two points you have raised and raise a concern of my own in the hope that this can now be addressed.

Further Conduct

The steps we discussed on the telephone were as follows:-

1. You will let me have a draft scheme. The Trustees will need to meet to consider this and make any observations. The Trustees will then need to make a formal application for a scheme.
2. A special Board Meeting has now been arranged for the evening of 25 October at which the draft scheme will be presented, the Trustees invited to give it formal approval and resolve to apply for a scheme. In order to ensure that meeting is effective papers need to be circulated by no later than 18 October which I hope gives adequate time as it is a day short of 2 weeks hence.
3. Before the Commission is invited to advertise its intention to make the scheme all documentation between the Trustees and Firoka will need to be agreed, subject of course to Charity Commission approval of the transaction.
4. The Charity Commission will advertise its intention to make the scheme giving a period for representations of one month.

5. Representations will then be considered. Points may arise that need to be raised with the Trustees. The aim however, subject to those points, is for the Commission to make the Order after which the parties can enter into legally binding commitments.

In the light of our discussion and your letter I had a fairly lengthy discussion yesterday, 4 October, with Firoka's solicitor. His client is anxious as regards timescale having regard to the nature of the financial commitment it is making.

I summarised the above procedural steps and timescale. I indicated that the timescale with regard to consideration by the Commission of substantive representations was a little uncertain and was of course outside the hands of the Trustees. I will have to wait and see whether they are comfortable with that information.

Your Two Points

I turn now to the two points you have raised. I am seeking advice from Messrs King Sturge as to the advice they provided in relation to the Developer's costings, whether they were realistic and the risks of project overspends. Your presumption, under the heading "Risk – Development Obligations" that this advice informed the Trustees' negotiations in respect of the appropriate level of guarantee to be sought at each stage of the lease and development obligations is correct and I will be providing further information on this as soon as it is to hand from King Sturge.

As regards your second point the Trustees did explore with Firoka its experience and track record. Members of the professional team visited Heythrop Park and I have asked for information as regards this visit and the assessments made which I will provide to you as soon as it is to hand.

My Concern

Finally I turn to the point flagged earlier which gives me cause for concern. In the last heading of your letter – "The Scheme" – you have said

"The Order will take the form of a scheme.."

I understand this to be the Commission's indication that instead of an Order under S.36(1) of the Charities Act 1993 a scheme will be made under S.16 subject to the publication and representations procedure in S.20.

I think it fair to say that we have all been under the impression that any lease granted by the Trustees would be subject to the consent by Order of the Charity Commissioners under S.36.

The origin of this understanding rested with a meeting attended at the Commission in 1997 following which Paul Clapp wrote on 24 October 1997. In his letter he said

"At the meeting last Tuesday it was agreed that I would write to you in respect to the Order under S.36 of the Charities Act 1993 that would be necessary to authorise a lease for 125 years under the power that would be conferred by the proposed scheme."

The scheme to which Paul referred was the scheme appended to what became The Charities (Alexandra Park & Palace) Order 2004.

When this matter was before the Board in March 2006 the Board formally resolved to request a S.36 Order. The Board had previously, on your advice, given public notice of the proposed disposition inviting representations in accordance with S.36(6) on the basis that a S.36 Order was to be sought.

In this context you will understand why I am now slightly puzzled by your statement that the Order will take the form of a scheme. The scheme in respect of which S.16 grants enabling powers

refers to, inter alia, "a scheme for the administration of a charity". For my part I find it difficult to understand how an Order authorising the grant of a long lease can be said to be a scheme for the administration of a charity.

Be that as it may, and it is a point on which I would invite your observations, your indication that a scheme is the way forward creates, or perhaps more accurately recreates, a previous major practical difficulty. This is in relation to continuing uncertainty as to the identity of the Trustees.

What happened in relation to the scheme in the 2004 Order, referred to above, was that an application for it was made both by the Council and the Board. May I refer you to the recital paragraphs in the Appendix to that Order.

You have sent me applications for completion, for whichever is applicable. One of these applications is on the basis that the Trustee is a body corporate and the other on the basis that it is unincorporated.

If there is to be consistency with the 2004 Order, and if there is to be a further scheme I cannot see that there can be inconsistency, there will need to be a formal meeting of the Council and a resolution to apply for a scheme as well as a special meeting of the Board and resolution to apply for a scheme.

For my part I would like to think this could be avoided if the Commission are prepared to proceed by way of S.36 Order as I think has been envisaged since at least 1997 rather than a S.16 scheme.

May I leave this rather important point with you for early consideration. I am of course available to discuss it on the telephone.

Yours sincerely

IAIN HARRIS

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10 October 2006

Dear Victoria

Alexandra Park and Palace

I refer to my letter of 5 October.

There are two points outstanding from your letter of 3 October with which I am now in a position to deal.

The two points were:-

- (a) King Sturge's advice to the trustees on the project costs, the risks of overspend and the trustees' negotiations in respect of the appropriate level of guarantee.
- (b) The credentials of Firoka's team, having regard to its other projects.

Following receipt of your letter I wrote to Roger Vail who leads King Sturge's team with regard to the development issues.

In the circumstances I can do no better than let you have a copy of my letter to Roger of 5 October, together with his reply of 6 October, to hand today and the various email attachments.

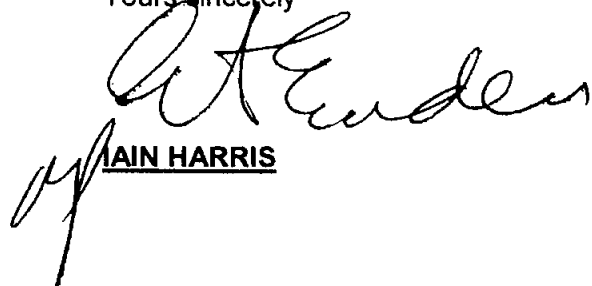
I think the letter and email and attachments deal comprehensively with the advice in relation to Firoka's figures for development costs and the manner in which the guarantee was negotiated.

Roger's letter sets out his professional assessment of the other developments carried out by Firoka and its professional team.

I hope I have now dealt with all of the points arising out of your letter of 3 October.

I now look forward to hearing from you as soon as possible with your comments upon what I described as "my concern" in my letter to you of 5 October.

Yours sincerely


AIN HARRIS

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27 October 2006

Dear Victoria

Alexandra Park and Palace

I am writing further to our telephone conversation on Thursday 26 October and our subsequent exchange of email.

I am now enclosing completed Application for a Scheme by the Trustees. The Board Members, who are the Charity Trustees, are named and listed on page 2. On page 4 I have recorded that four Trustees voted for, one was absent and two abstained. The Chair was authorised by resolution to sign the application and duly did so.

So far as the wording of the draft Order is concerned, I have made my two observations in my email and have nothing further to add.

I now turn to advertising arrangements. My email of 26 October attached the "Schedule of Advertising" that was put together in August/September 2000.

That Schedule has now been amended and I enclose a copy.

We are presently aiming for an advertising deadline of 16 November. This will make advertisement in Haringey People impossible but the deadlines for other newspapers at paragraphs 2, 3 and 4 can be met.

I am instructed that the North London Group of Newspapers contains the Muswell Hill Journal, the Hornsey & Crouch End Journal, the Tottenham Journal and the Edmonton & Wood Green Journal. This would give the draft Order extremely wide publicity, both locally and nationally.

I hope this is acceptable and I look forward to discussing further conduct with you during the course of the week commencing 30 October.

Yours sincerely



IAIN HARRIS

233

Mick George

From: Iain Harris [I.Harris@howardkennedy.com]
Sent: 26 October 2006 12:30
To: Victoria Crandon
Subject: Alexandra Palace

Victoria

Thank you for your call

As regards the scheme I have looked back at the advertising arrangements of 2000 for the 2004 scheme.

Paul Clapp, in his letter of 8 August 2000, asked for proposals for how publicity should be given.

Eventually this was agreed and I am attaching a "Schedule of Advertising." As you will note this contained the local authority paper, 2 local papers, boards in the Park and Palace and The Times.

I am checking with the General Manager as to the position in respect of 1, 2 and 3 but subject thereto would have thought the precedent should be followed.

On 25 September 2000 Paul sent me wording which you may find helpful. I attach a copy of the advertisement <<Advertisement for Ally Pally (H0880404).DOC>> <<Schedule of Advertising (H0880289).DOC>>

As regards the wording of the Order I make 2 points

- 1 Para 3. Can the 3 months be amended to 6 months
- 2 Para 4(2) Amend to read

| | |
|---|---|
| <p>the use of documents and interfering with the use of</p> | <p>"Those procedures shall address in particular covenants which restrict the leased premises to uses consistent with the governing covenants preventing the use of the leased premises the charity's retained land."</p> |
|---|---|

This is only a drafting point - "the legislation" in the draft was not defined.

I will write to you formally with the completed scheme application.

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