

CHARITY COMMISSION
ALEXANDRA PARK AND PALACE

**DECISION TO AUTHORISE THE GRANT OF A LEASE OVER THE PALACE AND
SURROUNDING LAND UNDER THE ALEXANDRA PARK AND PALACE ORDER
2004**

DECISION OF THE COMMISSION MADE 27 April 2007

1 *The issue before the Commission*

1.1

Whether to authorise the grant of a lease for 125 years over the Palace and its immediate surrounding land under clause 3 of the Scheme established under the Alexandra Park and Palace Order 2004.

1.2

The Commission on 28 November 2006 gave public notice of its intention to authorise the charity to lease the Palace and immediate surrounding land to a developer for a term of 125 years by way of Order made under the Scheme. The notice invited representations to be made by members of the public to the Commission about the proposed order. A substantial number of representations were received.

The representations now needed to be considered by the Commission before determining whether the authorisation should be given.

2 *Decision of the Commission*

2.1

Having considered the representations and reviewed the basis for authorising the lease, the Commission has determined that the lease should be authorised.

2.2

This decision to authorise the lease on behalf of the Commission was taken by Lindsay Driscoll and John Williams, Members of the Commission's Board and Commissioners (the Commissioners) under delegated authority.

3 *Background*

3.1 *Alexandra Park and Palace*

Alexandra Park and Palace (the Charity) is governed by the Alexandra Park and Palace Act 1900, the Alexandra Park and Palace (Public Purposes) Act 1913, The Alexandra Park and Palace Order 1966 and the Alexandra Park and Palace Act 1985, and the Charities (Alexandra Park and Palace) Order 2004 (collectively known as the Alexandra Park and Palace Acts and Orders). The Park and Palace are held on charitable trust to be used as a place of public resort and recreation and for other public purposes (the purpose of Alexandra Park and Palace Acts and Orders).

The trustee of the Charity is the Council of the London Borough of Haringey (the Trustee) which has formally delegated the fulfilment of the functions, powers and duties of the Council as trustee of Alexandra Palace and Park under the Alexandra Park and Palace Acts and Order 1900 to 2004 to a committee known as the Alexandra Park and Palace Board (the Board).

3.2 The Alexandra Park and Palace Order 2004

The Alexandra Park and Palace Order 2004 (the 2004 Order) was made on 27 January 2004 and came into force on 10 February 2004. The Order brought into effect a scheme (the Scheme) which is set out in an Appendix to the Order.

Clause 3 of the Scheme provides as follows –

Power to lease. The Trustees may, subject to the consent by Order of the Charity Commissioners, grant a lease of the whole or part or parts of the Palace buildings and the immediate surrounding area (which for the purpose of identification only is shown coloured red on the plan deposited with the Charity Commissioners under number 46278) for a term not exceeding 125 years at the best rent reasonably obtainable regard being had to the purpose of the Alexandra Park and Palace Acts and Order 1900 to 1985, provided that the Trustees may not grant any such lease which permits a use otherwise than is consistent with the said purposes.

3.3 The proposed Order, publication and consultation

The Board formed the view that the purposes of the Charity could be more effectively carried out if the Palace premises could be developed for recreational and other use consistent with the purposes of the charity. This would also ensure the financial viability of the Charity which had been subject to a revenue deficit for a number of years. Following professional advice, the Board carried out a marketing exercise seeking bidders for development of the Palace and immediate surrounding land under a long lease. The Board, having received expressions of interest, invited submissions from preferred bidders and, against established criteria, selected a preferred developer and lessee.

Having negotiated terms for the letting of the whole of the area subject to Clause 3 of the Scheme to a developer, the Board requested an order of the Commission to allow it to grant a lease (the proposed lease) pursuant to Clause 3 of the Scheme. When the 2004 Order was subject to Parliamentary scrutiny, the Commission had agreed that any order authorizing a lease would be subject to public consultation given public concerns which had arisen. Accordingly, once the Commission considered the case put by the Board and decided that the order should be made authorizing the lease, it published the proposed order and sought the views of the public.

Where legislation requires the Commission to publish a draft order, the period for the public to make representations is not less than one month. A similar procedure was put in place for this voluntary publication although a period of five weeks, to take account of intervening public holidays, was selected for the public to make representations. The draft order was published on 28 November 2006 in the Times newspaper, six local London newspapers and on notice boards at the Palace and Park. The public consultation period closed on 5 January 2007 although in practice, representations received after this date were also given consideration.

In all, 328 representations together with a petition signed in 2004 were received and considered by the Commission.

4 Framework for the issues considered

4.1

The Commissioners considered that in reaching their determination, as to whether to authorize the Trustee to enter into the proposed lease, they needed to consider whether, firstly, the proposed lease was within the power to let as prescribed by Clause 3 of the Scheme and, secondly, whether the grant of the proposed lease could be authorized as being expedient in the interests of the charity, taking into account the representations which had been received. The Commissioners dealt with each issue in turn.

4.2 Is the proposed lease within the power conferred by the Scheme?

4.2.1 The Commissioners noted the provisions of Clause 3 of the Scheme as set out in paragraph 3.2 above. The Commissioners noted the following provisions of the proposed lease:

- the area to be let in the proposed lease covers the Palace buildings and the immediate surrounding areas, all of which fall within the area delineated in the plan and deposited with the Commissioners at the time of the Scheme.
- the term specified in the proposed lease is 125 years and is therefore the maximum term permitted in the 2004 Scheme.
- the proposed lease makes provision for rent and other financial payments to be made by the tenant to the Charity. The obligations described as rent in the proposed lease are certain obligations of a periodical nature which would properly be described as rent under common law or under the definition in section 205 of the Law of Property Act 1925¹.

4.2.2 The Commissioners noted that surveyors acting exclusively for the Charity have advised the Board that the terms of the proposed lease agreed represent the best disposition available to the Charity, and that they confirmed that the rent provisions represented the best rent reasonably obtainable, regard being had to the purpose of the Alexandra Park and Palace Acts and Orders. The Commissioners noted that they had no reason to question that view, particularly given that the proposed tenant was selected from thirteen expressions of interest in a lease of the Palace following a marketing campaign specially devised for the Palace by the Charity's professional advisers.

The Commissioners noted that given the limited use to which the building could be put given its state of repair, any tenant would need to make a substantial capital investment.

4.2.3 The Commissioners further noted that the final requirement in Clause 3 of the Scheme is that the use permitted by the lease must be consistent with the purposes of the Alexandra Park and Palace Acts and Orders. They noted that the use which the tenant is permitted to make of the Palace is restricted in the proposed lease, being expressly restricted to "uses of the Premises consistent with the purposes of the Alexandra Park Acts". They noted that the proposed lease also describes ancillary uses, but makes it clear that these, "for the avoidance of doubt must be consistent with the purposes of the Alexandra Park Acts".

¹ See for example Woodfall 7.0001-7.0026

The Commissioners also noted that the purposes of the Charity, as derived from the Alexandra Park and Palace Acts and Orders, are that the Park and Palace are to be used as a place of public resort and recreation and for other public purposes. The Commissioners considered that the primary uses and ancillary uses described in the proposed lease were consistent with those purposes. They are *either* uses to which the Trustee might itself have put the Palace in order to promote the free use and recreation of the public *or* they are uses to which the Trustee might have permitted others to put the Palace under other powers conferred under the Alexandra Park and Palace Orders.

4.2.4 The Commissioners further noted that the Scheme contemplates that the Palace will be developed and let on a commercial basis by a developer, paying to the Charity the best rent reasonably obtainable given the required use. However the Commissioners considered that the Scheme only permits the developer to make use of the Palace in a way which the Trustee could have done in pursuit of its charitable purposes. It only permits a use under any lease which is consistent with the management of the Park and Palace as a whole by the Trustee as a place of free use and recreation of the public. The Commissioners concluded that a commercial development lease was contemplated by the power to let in the Scheme and that the use permitted by the proposed lease is consistent with the purposes of the Charity.

4.2.5 The Commissioners concluded that the proposed lease fell within the power to let conferred by the Scheme.

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

5.1

The Commissioners noted that the Scheme required the consent of the Commission to the proposed lease to be provided by way of an order and that the Commission's authority to make the order derived from the Scheme. The Commissioners considered that it was implicit in the power to make an order under the Scheme that the order should only be made if the grant of the lease in question was expedient in the interests of the Charity². The Commissioners also considered that it was implicit in the power to make the order that where it was expedient to do so, the Commission could include incidental and supplementary provisions.

The Commissioners noted that in assessing whether a course of action is expedient in the interests of the Charity, the Commission is not able to substitute its decision for that of the Trustee. Section 1E of the Charities Act 1993 specifically prohibits the Commission from acting in the administration of a charity. Rather, it is for the Commission to consider whether the Trustee had made the decision in furtherance of its objects and powers, the decision was properly taken and that it was taken in the best interests of the Charity.

Finally, the Commission would need to be satisfied that the decision was in the interests of the Charity and provided an advantageous means of furthering its purposes.

5.2

The Commissioners considered the information provided by the Board on behalf of the Trustee about the decision it had taken and the criteria described above for determining whether the proposed lease was expedient in the interests of the Charity.

² See by way of analogy the Commission's power to authorise dealing in charity property conferred by Section 26 of the Charities Act 1993

5.2.1 The Commissioners first considered whether the decision was properly taken by the Board in the best interests of the Charity. In particular they considered that the responsibilities of the trustees in making such a decision were as follows:

- To act within the powers conferred upon them and the established rules and procedures for dealing with issues of the kind under consideration³.
- To act in good faith⁴
- To adequately inform themselves in order to make the decision in question⁵
- Not to take into consideration any factors which it was not proper for them to take into account⁶
- To consider any factors which they should take into account⁷
- To act reasonably (i.e. the decision should be within the range of decisions which a reasonable body of trustees could have made)⁸

5.2.2 The Commissioners concluded that the decision had been properly taken in the best interests of the charity after consideration of the following factors:

5.2.3 Whether the proposed lease was within the terms of the power conferred by the Scheme.

The decision had been taken by the Board to whom fulfilment of the functions, powers and duties of the Council as trustee had been delegated. The decision was therefore taken within the rules and procedures established for taking decisions in connection with the management of the Charity.

5.2.4 Whether the Trustee had acted in good faith.

As the Charity has been supported for many years by loans from Haringey London Borough Council (Haringey) (the total owing to Haringey has previously been the subject of some dispute), there were inevitably some conflicts of interests between the Council in its capacity as Trustee of the Charity and the Council in its capacity as a local authority. It was also recognised that the Charity and Haringey shared a common interest in arrangements which improve the financial position of the Charity. In the Commissioners' view, the delegation of the Trustee's functions and the

³ *re Hastings-Bass dec'd* (C.A) [1975] Ch 25

⁴ *re Hastings-Bass* (*supra*); *Armitage v Nurse* [1997] 2 All ER 705

⁵ *R v Charity Commissioners ex parte Baldwin* (2001) 33 HLR 48, QBD; *Scott v National Trust* (*supra*)

⁶ *Mettoy Pension Trustees v Evans* (Ch.D.) [1990] 1 WLR 1587; *Dundee General Hospitals Board of Management v Walker and another* [1952] 1 All ER 680

⁷ *Mettoy Pension Trustees v Evans* *supra*; *Dundee General Hospitals Board of Management v Walker and another* *supra*

⁸ *Lee v Showmen's Guild of Great Britain* [1952] 1 All ER 1175; *Scott v National Trust* [1998] 2 All ER 705

provision of independent advice on trust matters to the Board provided some insulation from the conflict.

An issue about the extent to which Haringey was under a legal obligation to maintain the land and premises owned by the Charity, had also been subject to some dispute which remained unresolved. There was also an issue about the extent to which the financial circumstances of the Charity had been properly represented to the Commission by the Trustee. That issue related to the indebtedness which the Charity owed to Haringey arising from the latter's subsidy over a number of years. This had been subject to a dispute between Haringey and the Trustee which had been resolved by the Treasury Solicitor. The extent and degree of this debt was now being challenged.

The Commissioners noted that both of these issues pre-dated the establishment of the 2004 Order and that these matters had been known at the time when the 2004 Order was before Parliament. The Commissioners concluded that both the Trustee and the Commission were entitled to rely on the provisions of the 2004 Order as a basis for granting and authorising a lease in accordance with its terms.

Consequently the Commissioners were satisfied that the Trustee in relation to this matter had acted in good faith.

5.2.5 Whether the Trustee had properly informed himself in relation to the decision.

The test to be applied by the courts is not one of the trustees having complete information forming the basis of a full analysis and discussion⁹, but instead is of a lower level, which the Commissioners felt had been discharged in this case. In particular, the Board had sought appropriate professional advice in order to inform itself on matters in which it was not expert. Following professional advice, the Board had adopted a marketing strategy designed to gather information about the interest in the market for taking a lease of the Palace in order to select a preferred bidder. Of 13 indications of interest following marketing, the Board invited detailed proposals from three of the respondents. Two of those produced proposals which the Board assessed against criteria it had established to reflect the interests of the Charity. Having selected a preferred bidder, the Board took professional advice relating to the relative advantages of the proposed lease to the Charity and relating to the legal framework through which risks would be managed.

5.2.6 Whether the Trustee had taken into account irrelevant factors.

There was no evidence that the Board had taken into consideration any factors it was not proper for them to take into consideration. As noted above, there were inevitably some conflicts of interest between the Trustee and Haringey and some aspects of the relationship had been in dispute and others remained unresolved. However, the delegation of the functions of the Trustee to the Board and the provision of independent advice on trust matters to the Board provided some insulation from the conflict.

5.2.7 The Commissioners considered that the Board had considered factors which it should take into account. In addition to professional advice on trust matters, valuation and marketing of the Palace and the terms of the arrangements with the proposed tenant, the Board confirmed that a range of alternatives to letting the Palace for development had been considered

⁹ In *Scott v National Trust*, the judge recognised that complete information and full analysis is not the appropriate standard and that "too stringent a test may impose intolerable burdens"

5.2.8 The Commissioners considered the case made by the Board, the proposed lease, the draft project agreement to accompany the proposed lease, the Alexandra Park and Palace Acts and Orders and the representations, which appear below (particularly those relating to the sufficiency of the lease). The Commissioners noted that the lease would provide the Charity with the prospect of receiving some payments by way of rent and premium and that given the state of repair of the Palace, any tenant would need to make a substantial capital investment. The Commissioners concluded that the Board's decision to grant the proposed lease to the developer on the terms agreed appeared to be within the range of options which a reasonable trustee might be expected to make.

5.2.9 On considering the case made by the Board, the proposed lease and project agreement, the Alexandra Park and Palace Acts and Orders and the representations, the Commissioners were also satisfied that granting the proposed lease was in the interests of the Charity and provided an advantageous means of furthering its purposes. Consequently, and subject to the consideration of the representations, the Commissioners considered that the grant of the proposed lease would be expedient in the interests of the charity.

5.3 Consideration of representations

The Commissioners then went on to consider the representations which had been received on giving public notice of the Commission's intention to confer the authority to enter into the proposed lease. The Commissioners also considered the representations which were made at a meeting held at the Commission on 2 April 2007 and attended by members of the Board which they had not already previously considered. Although the Commissioners noted that each of the 328 representations received and considered was unique, there were clear trends in the concerns of correspondents. These concerns had been raised with the Trustee to see whether it would be possible to deal with the concerns consistently with the Charity's interests. The Commissioners considered each of the potential areas for concern raised in the representations which are set down below.

- *That the Park and Palace should continue to be used as a place of public resort and recreation open to the public and that the grant of a development lease is not consistent with the purposes and charitable status of Alexandra Park and Palace.*

The 2004 Order bringing into effect the Scheme, by way of clause 3 clearly provided that the Trustee may grant a lease of the whole or part or parts of the Palace buildings and the immediate surrounding area for a term not exceeding 125 years, at the best rent obtainable, regard being had to the purpose of Alexandra Park and Palace Acts and Orders and being consistent with those purposes. In the Commissioners' view, this clearly contemplated a lease being granted on commercial terms, and that a development lease, that otherwise fulfilled the criteria, fell within its scope. Further, in their view, the proposed lease did not change the overall purposes on which the land and premises of the Charity were held, and nor did it threaten the charitable status of Alexandra Park and Palace.

- *CUFOS building.*
CUFOS is a community centre charity which uses the old station building at Alexandra Palace. It has a lease of the old station building which expires in 2011. The old station building is part of the built on area in the immediate surrounding area of the Palace which the Trustee wishes to let to the

developer. Although the developer would be obliged to honour the existing lease, there were concerns that the developer might not renew that lease in 2011.

In discussing the concerns with the Trustee, the Commission accepted that if the CUFOS building were not let to the developer, the Trustee would have to consider whether and on what terms to renew the CUFOS lease in 2011. However, the Trustee was able to agree with the developer and undertake to the Commission that the CUFOS lease should be given statutory protection under the Landlord and Tenant Act 1954. This will provide CUFOS with greater rights to continue occupying the old station at the end of their lease than is currently the case.

- *Retention of original TV studios.*

Representations on this matter covered the desirability of retaining the original studios, providing public access to them and the creation of a television museum. The Trustee's response pointed out that the developer's concept included a television museum. In recognition of the importance attached to that, the project agreement requires the developer to try for a period of three years, to let space for a television museum to a museum operator. The response also explained that the location of the actual studios made public access or any promise of public access impracticable.

With no potential museum operator identified at the time of negotiating the lease, the Commission accepts that the arrangements in the draft project agreement represent a realistic balance between on the one hand trying to preserve the link with television as part of a building let as a place of public recreation and on the other securing space to be used for other types of public recreation if no one can be found to operate a television museum.

- *Willis organ and theatre.*

Representations were made seeking assurances and making suggestions about the future of these. The Trustee explained that the lease provides for the developer to assist the Alexandra Park Organ Appeal Society to raise funds for the improvement and retention of the organ. The Trustee also explained that the covenant to bring the theatre back into use for an operator, subject to detailed provisions in the project agreement was as specific an agreement about the future of the theatre as they could secure.

- *Monitoring Arrangements.*

Representations were made suggesting how the compliance by the developer with obligations in the lease and development agreement should be monitored. The Trustee acknowledged that it is essential for it to have monitoring processes in place and explained that it was considering processes with a view to adopting them. By the inclusion of directions in the draft order, the Commission had already drawn the attention of the public and the Trustee to the importance of the Trustee's role in monitoring and ensuring compliance with the developer's obligations under the lease and project agreement. The adoption of procedures is a matter for the Trustee's discretion. With the advantage of its professional advice on the lease, it is best placed to select appropriate procedures.

- *Statutory Advisory Committee.*
The Alexandra Park and Palace Act 1985 created a Statutory Advisory Committee and sets out a clear statement of its responsibilities and its relationship with the Trustee. Representations expressed concern at whether the Statutory Advisory Committee had been properly involved in the decision to let the Palace. The Trustee gave assurances that it had, given its position and terms of reference. However to ensure the Statutory Advisory Committee's role in respect of the rights the Charity retains over the Palace is recognised, the Commission will introduce a reference to it in the directions in the order.
- *The Park.*
Representations expressed concerns about whether the use of the Palace would interfere with the Park and how the Park would be funded. The proposed lease requires the Palace to be used consistently with the purposes of the Alexandra Park and Palace Acts and also includes a covenant not to cause what is called a nuisance to neighbouring properties. These covenants will require monitoring and enforcement by the Trustee. In terms of financial support for the Park, the Trustee explained this has been budgeted for and a request has been made to Haringey.
- *Other issues.*
Representations raised other issues which have been considered. The Trustee explained that questions relating to listing, planning, health and safety during construction and traffic impact in the locality are matters for the planning authority to consider in the context of planning applications. The Trustee explained that the lease does not include metropolitan open land so concerns about letting metropolitan open land do not arise. The Trustee has accepted that any use of part of the Palace as a Casino would have to be established as being consistent with the purposes of the Alexandra Park and Palace Acts and in any event is not a current issue because Haringey has not applied for the ability to licence a small casino under the Gambling Act 2006.
- *Issues already considered.*
Some representations questioned the power of the Commission to make the order or whether the lease fell within the power granted by the Scheme. Others questioned whether the Commission had given enough public notice of its intention to make the order. Some had made detailed comments about the terms or sufficiency of the proposed lease or suggested ways the Commission should go about reviewing the proposed lease and other documents. Others expressed concern about the process by which the preferred bidder was selected. Some expressed concern that the Trustee as the main supporter of the charity was in a conflict of interests. These issues have been considered as indicated above and formed part of the Commission's decision.

6 Conclusion

Having considered the issues and representations as set out respectively in paragraphs 4 and 5 above the Commissioners concluded that they were satisfied that the proposed lease is permitted by the terms of the Order. The Commissioners were also satisfied that the Trustee has exercised its discretion properly in deciding to enter into the proposed lease arrangement and that the proposed lease is beneficial and in the interests of the Charity. Consequently the Commissioners were

satisfied that subject to the comments below they should authorise the grant of the proposed lease as being expedient in the interests of the charity.

The Commissioners noted that the Board's consideration of the proposed lease had been dependent on its consideration of the associated project agreement. The proposed lease should, therefore in the Commissioner's view, only be entered into if the project agreement is also entered into.

The Commissioners noted that following the grant of the proposed lease, the Trustee will retain important functions in monitoring and enforcing the covenants over the Palace. It must fulfil these functions in order to manage and protect the Park and Palace.

The Commissioners noted that in response to the consultation, the Commission has secured the agreement of the Trustee to grant the charity CUFOS protection of its lease of the old station building under the Landlord and Tenant Act 1954. The Commission's order will also make directions to the Trustee to ensure the Statutory Advisory Committee's role in respect of the Palace is understood.

In conclusion the Commissioners were satisfied that the proposed lease falls within the Scheme, that the decision is in furtherance of the objects and powers of the Charity, that the decision to enter into the proposed lease was properly taken by the Board in the best interests of the Charity. The Commissioners were satisfied that the decision to enter into the proposed lease by the Board was in the interest of the Charity and provided an advantageous means of furthering its purposes, and consequently will be authorised under the Charities (Alexandra Park and Palace) Order 2004 as being expedient in the interests of the charity. The Commissioners decided that the Order will make additional directions to the Trustee to ensure that the role of the Statutory Advisory Committee in relation to the grant of the proposed lease and the management of the Charity is adhered to.