

Report Title: **Charity Indemnification of London Borough of Haringey.**

Report of: **David Loudfoot, General Manager**

1. Purpose

- 1.1 To advise the Board of the current treatment of the operating deficit of Alexandra Palace and Park Charitable Trust and their options for the future treatment of this.

2. Recommendations

- 2.1 The Trustees consider if they wish to request LBH to discharge the trust from the debt relating to the period 1988/89 up to 1990/1991 in respect of which it may be entitled to seek indemnification but which it wrote out of its books in 2005/6.
- 2.2 The Trustees consider if they wish to request LBH to discharge the trust from the debt relating to the period 1991/2-1994/5 in respect of which it is entitled to indemnification but which it also wrote out of its books in 2005/6
- 2.3 The Trustees consider if they wish to request LBH to discharge the trust from the debt relating to the period 1995/6 to 2007/8 in respect of which it is entitled in principle to indemnification but which the Council wrote out of its books In 2005/6.
- 2.4 The Trustees consider if they wish to request LBH to discharge annually any future accumulation of debt from the operating deficits of the Charity.

Report Authorised by: **David Loudfoot, General Manager**.....

Contact Officer: **David Loudfoot, General Manager, Alexandra Palace & Park, Alexandra Palace Way, Wood Green N22 7AY Tel No. 020 8365 2121**

3. Executive Summary

- 3.1 This paper examines the position in relation to monies expended by the London Borough of Haringey out of its corporate assets on behalf of the Charity and shown in the Charity's accounts as liabilities due to the Council but which have been written out of the Council's accounts. It also examines the position as regards the Council continuing to fund the Charity's ongoing annual deficits. It invites the Trustees' guidance as to the approach they wish to be taken toward the Council..

4.	Reasons for any change in policy or for new policy development (if applicable)
4.1	N/A
5.	Local Government (Access to Information) Act 1985
5.1	In drafting this report, reference has been made to the following documents: Correspondence between Treasury solicitor and LBH between 1 May 1996 and 27 th September 2006 District auditor public interest report dated September 1999 Accounts of Alexandra Palace Charitable Trust 2007/2008

6. Report

- 6.1 The Trusteeship of Alexandra Palace was transferred to the London Borough of Haringey (LBH) on the 1st January 1980
- 6.2 The Palace was devastated by a fire in the summer of 1980 and in the following rebuilding of the palace, costs overran and Charity funds were exhausted in 1987/88.
- 6.3 The Council expended its corporate funds on providing capital for the refurbishment and also revenue support to meet the continuing annual revenue deficits of the trust.
- 6.4 During the early 1980's the LBH tried to persuade the Attorney General that it had behaved reasonably and properly both as regards meeting capital expenditure and funding the annual ongoing revenue deficits. The position was eventually agreed that certain sums could be recovered from the assets of the Charity if and when its financial future was secured and parts of the historic and ongoing annual revenue deficits could similarly be recovered. The definitive position was set out in correspondence between LBH and the Attorney General in the period May 1996 to September 1996 and the public interest report of the District Auditor dated 1 September 1999. This was at a time when the Trustees proposed to grant a long lease from the capital proceeds of which they would repay monies to LBH.
- 6.5 The Council met on 30th May 1996 and agreed that *"without admitting that any part of the accumulated deficits were other than reasonably and properly incurred on behalf of the Charity, advise the AP&P board that the Council will not pursue its claim for indemnification beyond the revenue deficits plus interest 1987/88 onwards"*. This effectively resolved the issue of the capital debt.
- 6.6 The Council also decided that *"the Council agreed in principle to continue to funding, subject to its right to full indemnification, for annual deficits on APP&P until the Palace becomes the responsibility of the preferred developer. In addition such funding is subject to the Councils satisfaction as to the progress made on the development proposals."*
- 6.7 Thus, by Sept 1996 the agreed position between the Council and the Attorney General was that the Council would write off the capital debt as it was not

recoverable from the Charity but would still seek recovery of the revenue debt for the operation of the Charity. The entitlement of the Council to seek recovery was subject to the future of the Charity being secured and it being in a position to make payment.

6.8 These matters were reported to the Board in the report of the trust solicitor on November 1996, this report contained reference to all the background correspondence.

6.9 The Charity produces a budget estimate each year for consideration and approval by the Board, all such budgets produced FY1991/92 and onwards have shown a deficit budget requirement.

6.10 The accounts of the Charity have been independently audited, in accordance with the provision of the Charities Act 1993 and regulations thereunder since FY1997/98.

6.11 The accounts from 1994/95 onwards show a debt due by way of a provision for the years 1998-1991 and an indemnification to LBH in respect of 1991 onwards. This is in line with the advice from the correspondence with the treasury solicitor.

6.12 These are broken down into:

(a) provision for 1988/99-1990/91 £3,396,000.

This figure is comprised of £755,000 provided by LBH to the Charity and accumulated interest of £2,641,000

This is in respect of the operational deficits from 1988-1991 and is still in dispute.

The trust annual report indicates at note 18 on page 29 of the agreed Accounts for 2007/8 that the Council "may be entitled to this".

(b) provision for 1991/2-1994/5 £14,886,000

This figure is comprised of £5,005,000 provided by LBH for operational deficit and accumulated interest of £9,881,000

c) Indemnification for 1995/6 - 2007/8 £19,082,000

This figure is comprised of £14,228,000 provided by LBH for operational deficits and accumulated interest (up to 31/3/2005) of £4,854,000.

The treasury solicitor has agreed in correspondence that in respect of the indemnifications at b & c above that "the Council is entitled to this"

6.13 From 2005/6 onwards the Council has ceased to charge interest on this balance as it has been written out of the Council's accounts.

- 6.14 At the Trustees meeting of the 6th January 2009 the Trustees requested that a paper be submitted on the subject of the 'debt' and setting out the Trustees' options.
- 6.15 The current position in the statutory accounts is that the provision is shown as a liability to the Council. In the 2007/8 accounts, the total liability is £37,363,918. It is clear that the treatment of this item has been agreed by the Attorney General, district auditor and the Charity's auditors. It is equally clear that unless the Council formally discharges the debt the Trustees must continue to show this as a liability in their accounts.
- 6.16 In answers to questions relating to the 2007/8 accounts, the General Manager stated that his understanding of the position of the Council was that "*it wrote the amount out of its books in 2005/6 and it no longer appears on its balance sheet, however, the Council has not formally discharged the debt and whilst there are no particular conditions surrounding any potential repayment, at present it would only be if circumstances allowed*".
- 6.17 The Trustees options are that they may continue to accept the current treatment as this has been substantiated as correct or if they wish, formally request that the Council release the Charity from any liability to indemnify the Council.
- 6.18 It would be a matter for the Council, upon receipt of any request from the Trustees for release, to make its decision.
- 6.19 Further, the Trustees should note that if the Council were to agree to this discharge, it would need a further agreement to discharge any further annual deficit balance otherwise the trust will again begin to have a mounting deficit showing on the balance sheet.

7. Consultation

7.1 N/A

8. Recommendations

- 8.1 The Trustees consider if they wish to request LBH to discharge the trust from the debt relating to the period 1988/89 up to 1990/1991 in respect of which it may be entitled to seek indemnification but which it wrote out of its books in 2005/6.
- 8.2 The Trustees consider if they wish to request LBH to discharge the trust from the debt relating to the period 1991/2-1994/5 in respect of which it is entitled to indemnification but which it also wrote out of its books in 2005/6
- 8.3 The Trustees consider if they wish to request LBH to discharge the trust from the debt relating to the period 1995/6 to 2007/8 in respect of which it is entitled in principle to indemnification but which the Council wrote out of its books In 2005/6.

- 8.4 The Trustees consider if they wish to request LBH to discharge annually any future accumulation of debt from the operating deficits of the Charity.

9. Legal Implications

- 9.1 The Trust's Solicitor has been consulted and has advised on the drafting of this report.
- 9.2 A copy of this report has been provided to the LBH head of Legal Services.

10. Financial Implications

- 10.1 The discharge of the debt would have a significant effect on the trust deficit accounts.
- 10.2 The Council is not currently pursuing the trust for payment nor would it seem likely to unless the trust somehow came into funds sufficient to secure the future deficit free operation of the Charity.
- 10.3 A copy of this report has been supplied to the LBH CFO and his comments are attached at appendix 4

11. Use of Appendices/Tables/Photographs

- 11.1 Copy of TS correspondence
- 11.2 Copy of District Audit public interest report
- 11.3 Extract pages from APPCT accounts 2007/8 showing the note to accounts.
- 11.4 Comments of LBH CFO



Appendix 1

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SV

DX 123242 St James's Park Fax 0171 210 3232 0171 222 6006 Switchboard 0171 210 3000 (GTN 210)

Mr Gurbux Singh
Chief Executive
London Borough of Haringey
Civic Centre
Wood Green
LONDON N22 4LE

Direct Line 0171 210 3332

Please quote:

L90/6162/CJR/L8

Your reference:

Date:

1st May 1996

Dear Mr Singh

ALEXANDRA PARK AND PALACE

I am now in a position to give a detailed response to your letter of 19th February, which has been considered by the Attorney General with the advice of leading counsel.

Before turning to the issue of debt liability, I must mention two important preliminary points:

1. Mr Pascho did not say on 16th February 1995 (as you suggest in your letter) that the settlement of the debt liability could relatively easily be agreed. What he did say was that there was unlikely to be much dispute about the previous year's deficit (i.e. 1993-4), where the Council's budget had been shown in advance to the Charity Commission and the result for the year had been close to the budget.
2. Mr Pascho also said at the same meeting that if the Council wished to propose a settlement of the debt liability, they should let him have a suggested figure as soon as possible. It is a pity that this was not done, since it would have saved time if your present proposals had been put forward earlier.

The revenue deficit

Your suggestion that the charity should bear the whole of the operating deficit is not acceptable. To explain why, I will break the deficit down into different chronological periods.

1. Period up to 31st March 1987

Touche Ross's report shows £5.1 million of "operating deficit"

accruing up to 31st March 1987. However the Council did not provide any funding for the charity during this period. All development expenditure and running costs were paid out of the GLC's dowry of £8.5 million, the insurance money received after the fire, and the investment income from these two sums. The Council only started making payments from their own money when these other sources ran out, and it is only after that date that any question of reimbursement by the charity arises.

Once the Council started to make payments in 1987/8, one has to identify what they were paying for. The answer can only be the revenue and capital expenditure incurred from that date onwards. To suggest that they were somehow paying for a notional pre-existing deficit bears no relation to reality. All those previous running costs had already been paid for in earlier years. That is clear from the accounts for the relevant years, and it is what one would expect to have happened. The Council knew at the outset that the total funds available (including the insurance proceeds and the dowry) would have to pay for any running costs during the period of development. Thus, for example:

- (1) a report to the Alexandra Palace and Park Committee in November 1981 showed how the dowry would be used to pay (among other things) the running expenses of the Park during the period of development at a rate of £400,000 p.a. for four years; and
- (2) paragraph 7.1.5 of the Inspector's Report (following the planning inquiry) said that £3 million should be set aside from the total sums available to allow for possible revenue shortfall during the "build up" period.

No claim for the alleged revenue deficit in the period to 31st March 1987 can therefore be accepted.

2. Year ended 31st March 1988

The revenue deficit claimed for this year (according to the schedule attached to Mr Pirrie's letter of 23rd November 1995) is about £1.5 million. This was the year in which the charity's funds ran out and it became dependent on the Council for further funding. According to its accounts, the charity had a surplus of £13.57 million at the beginning of the year and received investment income during the year of £1.46 million. At the end of the year it had a total deficit of £3.1 million.

There is no reason why the whole operating deficit of £1.5 million in that year should be treated as having been funded by the Council, rather than the bulk of it coming from the charity's own money. In the absence of further evidence, it would be reasonable to treat no more than one sixth of the operating deficit as having been funded by the Council; ie

about £250,000. That reflects the proportion which the Council's total funding for this year bore to the charity's own resources. As to whether the Council have yet shown that this operating expenditure was properly incurred, the position is similar to 1988/9 and 1989/90, which I deal with next.

3. 1988/9 and 1989/90

The revenue deficit claimed for these two years totals £827,000. This was a period while the development was still being completed and before either the Charity Commission or the Attorney General had become involved. It is impossible to treat the revenue deficit in this period in isolation from the capital overspend. The development was taking much longer to complete and was costing far more than expected. Once cannot tell whether there would still have been any revenue deficit to be funded by the Council if the development had been carried out properly. This difficulty in trying to treat the revenue and capital deficits in isolation during the period of development was referred to in Mr Pascho's letter of 8th July 1993.

The Council have therefore not yet made out a sufficient case for reimbursement of revenue expenditure in these years. They will need to be considered in conjunction with the capital claim.

4. 1990/1

The analysis sent on 23rd November 1995 shows an operating deficit of £44,000 in 1990/1. However, we are concerned only with the extent to which the Council have spent money and provided funds on the charity's behalf. To calculate that amount, one needs to make adjustments to reflect changes in working capital balances, as Touche Ross did in Appendix 9 to their Report. Those adjusted figures were then used by Touche Ross to calculate the amount of interest payable, and I believe that the Council's calculations of interest in other years have also used similarly adjusted figures.

In 1990/1 these adjustments change the deficit of £44,000 into a surplus of £39,000, so no question of reimbursing the Council arises.

5. 1991/2 - 1994/5

It is accepted that the Council are entitled to an indemnity in respect of the revenue deficit in these four years. The figures in the November letter will need to be adjusted to reflect changes in working capital balances, as explained above, although the resulting total is unlikely to differ very greatly from the total of £4.7 million in the November letter.

I suggest that you should provide adjusted figures as soon as possible, with sufficient explanation to enable us to understand the adjustments. I would expect that the figures can then be quickly agreed. Could you please also confirm that the 1995 accounts have now been audited. If they have not, any final agreement for that year will have to await the result of the audit.

Interest

It is accepted that the Council are entitled to recover the actual borrowing costs of expenditure properly incurred on the charity's behalf. However the method adopted by Touche Ross for apportioning interest between capital and operating costs is not acceptable, and Mr Pirrie agreed at our meeting on 14th February 1996 that it was difficult to defend. The interest should be calculated on the average amount of the accrued revenue deficit in each year.

The rate of interest can be taken (as it was by Touche Ross) as the average of the Council pool rate in the year. I suggest that you should submit a computation of interest to date on the revenue deficits for the four years 1991/2 - 1994/5. Would you please also provide evidence to confirm the interest rate taken for each year; for example a certificate or letter from the auditor. I would again expect that these figures can be quickly agreed.

Capital deficit

Your suggestion that the charity should bear half of the capital deficit is quite unacceptable. As you know, the Attorney General's position is that the sheer size of the overspend, coupled with the severe criticisms in the PMI Report, create a strong prima facie case that the expenditure was not reasonably and properly incurred. The Council have so far done nothing to dispel that inference. You say in your letter of 19th February that "a great deal of supporting evidence was provided to the Department of the Environment before the Ministerial Meeting". I asked you on 29th February to send me copies of this material, but nothing has so far been supplied. If the material includes any additional evidence which you would like us to consider, please let me have it as soon as possible.

On page 5 of your letter, you set out eleven numbered points, which I shall take in turn:

1. It is irrelevant that the PMI Report did not reveal any misappropriation. The question is not whether the expenditure was dishonest, but whether it was reasonably and properly incurred.
2. It may be true that the nature of the building and the

project were such that it was difficult to predict in advance the total costs to be incurred. But that merely emphasises the riskiness of the entire venture. The Council's financial projections were subject to fierce criticism by objectors at the planning inquiry in 1982; see for example paragraphs 7.2.4-6 of the Inspector's Report. Although the Inspector did not make any findings about the financial issues because he decided that was unnecessary to his planning decision, he did conclude (in paragraph 17.49) that the objectors' analysis had posed a number of interesting questions and raised doubts about financial viability of the project.

- 3 & 4. Your suggestion that the design team had the necessary experience is explicitly contradicted by the PMI Report. They said (in section 3.2), "a project of this nature and complexity required a high degree of professional expertise...In our opinion, apart from Dr Smith the APDT did not include the expertise required for this type of project and should not have been undertaken "in house"".

You also refer to the team's previous experience on the Wood Green Shopping City project. However, I note that one of the points raised by the objectors in 1981/2 was that Wood Green was not an encouraging precedent. Costs were said to have been much higher than predicted and rental income much lower, while other expected benefits for the local community (such as a traffic-free high road, a rail link and sports facilities) never materialised at all.

5. Delays in construction work may indeed have led to increased costs. This again emphasises the risk involved in proceeding with a scheme where the financial margins were very tight from the outset and where (according to section 9 of the PMI Report) even by April 1984 the designs were "only in outline form and lacking in any substance or detail".
6. The same answer applies to your argument about the difficulty of stopping the work part of the way through. It is difficult to stop any building project mid-stream. That is why such projects have to be very carefully appraised and costed before they are undertaken at all. Where the property belongs to trustees, that is even more vital.
7. The forecasts of revenue allowed only a small margin, and they too had been criticised by objectors from the outset as being over-optimistic. The Inspector accepted (at paragraph 16.104) that a 10% increase in costs coupled with a 10% fall in revenue would lead to the Palace and Park running at an overall loss.

8. The recession probably did affect the exhibition industry and contribute to the large operating losses in the past few years. The Council is entitled to claim an indemnity for revenue expenditure in that period, as explained above. But this did not affect the capital overspend.
9. If, as you say, the Council embarked on the development without having had sufficient opportunity to understand the complexity of running the Palace and Park, that again only emphasises the risk which they were taking.
10. The interim measures taken before the main building project were plainly not able to generate a surplus. But they should at least have emphasised the need for extreme care in projecting future costs. Paragraph 2.4.8 of the Inspector's Report describes how the temporary structure known as "the Bubble" had overrun its costs estimate by at least 50%.
11. Your point about the last four financial years goes only to the revenue deficit, which I have already dealt with.

Resolution of the disputed liability

On paper, the amount of deficit still in dispute remains enormous. But you recognised at our meeting on 14th February 1996 that a part of the deficit would have to be written off by the Council in any event, even if (as you contend) the charity is theoretically liable to bear it. Indeed that has been recognised by the Council for some time. A briefing note to the majority group on 25th March 1993 said that the charity was "very unlikely to reach a position where it can repay any of the [capital deficit]".

Before the charity can be in a position to make any reimbursement, it must of course be sure that its future running costs are fully and securely provided for, either by future rental income from a developer who takes a lease of the Palace or by setting aside an appropriate part of any lease premium or by a combination of the two. When that has been done, the charity will need to provide for (a) reimbursement of the revenue deficit for the four years from 1991/2 together with interest, (b) any continuing revenue deficit and interest which the Council can show that they have funded reasonably and properly in 1995/6, and (c) any further revenue deficits which may continue until payments are received from a developer. Any additional liability of the charity for the past deficit will only be a live issue to the extent that a surplus may be expected after those payments and provisions.

You suggest in your letter (as Option C) that you might then be able to carry out further analysis in-house, including "looking at discrete areas of capital expenditure which could

easily and speedily be agreed". We will certainly consider any suggestions which you may have for identifying such discrete areas and deal with them as quickly as possible.

We would sound only one note of caution. Our concerns about the capital expenditure go to the very root of the development project which was undertaken. They include whether the project was appropriate for the charity at all, having regard to its risks and uncertainties; whether the original building contract was appropriate; and whether it was appropriate to use an in-house team. Unless the Council are able to go some way towards satisfying the Attorney General on these fundamental issues, it may be hard to identify particular areas of capital overspend which can be shown to have been reasonably incurred. If it does become necessary to resolve these fundamental issues, I do not suggest that the Council should embark at once on a forensic accounting exercise. The best starting-point would be for the Council to produce one or more papers, explaining in some detail their case on those issues, and producing the relevant contemporary documents. This is likely to provide the quickest and most effective start either to reaching agreement or to identifying points which will have to be investigated further.

Decisions in relation to the proposed development

On 30th October 1995 a joint meeting of the Alexandra Palace and Park Board and the Policy Committee of the Council agreed that you, as Chief Executive, should "engage the necessary resources to complete the project" (i.e. the proposed new development) and that details should be approved by a members' steering committee. The effect of this resolution seems to have been to deprive the Board of most of its decision-making functions for any new development.

This is contrary to advice which Mr Elias QC gave the Council in November 1990. He said that in circumstances where there was a potential conflict of interest between the Council and the charity, all decisions for the charity should be taken by the Board and all decisions of the Council qua Council should be taken by a separate committee. Could you please explain why that advice has apparently been departed from and what steps are now being taken to ensure that the Board will be able to consider the proposals fully and with a single-minded view to the interests of the charity. Could you please also let me have the minutes of all meetings of the Board since last September, let me know when the Board will be considering the short-listed alternative proposals, and what further meetings of the Board are now planned.

Mr Elias also advised that where there was a potential conflict of interest it was essential that separate advice was given to each interest. It seems surprising that the Board have apparently not yet sought advice on the proposed development, and I understand that they decided on 26th March

to put their legal work out to tender. Could you please tell me whether new solicitors have yet been appointed, and confirm that the new solicitors (whether Malkins or another firm) will be instructed at once to advise the Board on the present development proposals.

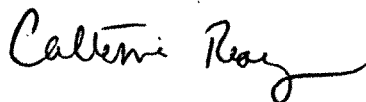
It is also vital that the Advisory Committee have a proper opportunity to fulfil their statutory functions under the 1985 Act. Their role (set out in paragraph 19 of Schedule 1) is to consider and advise the trustees on various matters, which specifically include general policy relating to activities permitted in the Park and Palace and any proposals requiring planning permission. I am concerned that a meeting of the Committee on 17th January 1996 was inquorate because insufficient councillor members attended. Will you please supply copies of minutes of any meetings of the Advisory Committee since last September, and let me know what further meetings are currently scheduled.

The Council as trustee

I note that the Board have been advised by Mr Robert Ham QC that the trustees of the charity are all the individual councillors as an unincorporated body, rather than the municipal corporation itself. It would be helpful if you could let me know whether the Council have sought further advice in the light of Mr Ham's Opinion and what is now the Council's own position on the matter.

A press article in the Daily Telegraph (7th March 1996) referred to the concern of individual councillors that, in the light of Mr Ham's advice, they might be personally liable to the charity. However, while the Attorney General can give no assurance that questions of personal liability will never arise, his concern at present is simply with how much of the deficit the charity should properly bear.

Yours sincerely



CATHERINE REAY
for The Treasury Solicitor

HARINGEY COUNCIL

Corporate Services

Alexandra House, 10 Station Road, Wood Green, London, N22 4TR
Tel 0181 975 9700 Fax: 0181 862 3815
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Your ref: **L90/6162/CJR/LS**
Our ref: **DOCS/JP/DS**
This matter is being dealt with
by

13th May 1996

Ms C Reay
The Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London
SW1H 9JS

Dear Ms Reay

Alexandra Park and Palace

Thank you for your letter of 1st May 1996 to the Chief Executive giving a detailed response to his proposals for resolving liability for the accumulated deficits in connection with Alexandra Park and Palace.

It is our intention to make a fuller response to your letter at a later date but at this time I am providing the information which you required.

The quantification of the revenue deficits 1991/92 on for which the Council is entitled to indemnification is attached at Appendix 1.

The quantification of the revenue deficit has been extrapolated to the 31st March 1999 as that is the calendar year when a head lease premium will become receivable under two of the development proposals currently under consideration.

The accounts for 1994/95 have been audited and the figures as presented reflect any changes brought about by that audit. There will be a delay in the formal conclusion of the audit because of an objection to the accounts in respect of the liability to the Council.

The figures in the November letter have been adjusted to reflect changes in working capital balances. The adjustments are in respect of changes in the current assets and liabilities of the Trust which affect the requirement for cash to be advanced. The calculation is illustrated below for 1994/95:

ALEXANDRA PALACE			
ANALYSIS OF MOVEMENT IN WORKING CAPITAL 1994/95			
	31 MARCH 1994	31 MARCH 1995	MOVEMENT
	£000	£000	£000
DEBTORS	200	124	-
PAYMENTS IN ADVANCE	161	234	
STOCK	114	129	
PETTY CASH	9	16	
CREDITORS	- 288	- 518	- 23
INCOME IN ADVANCE	- 228	- 298	- 7
OTHER BALANCES	- 79	- 54	- 2
TOTAL	- 111	- 367	- 256

The District Auditor has agreed the interest rates used in the calculations and his letter of confirmation is attached at Appendix 2.

I enclose, as requested, minutes of the Joint Meeting of Alexandra Palace and Park Board and Policy and Resources Committee on the 30th October 1995, and minutes of all meetings of the undermentioned bodies since September 1995:-

Alexandra Palace and Park Board

Alexandra Palace and Park Advisory Committee

Alexandra Palace and Park Development Steering Group

Meetings of the Advisory Committee (8th May 1996) and the Development Steering Group (10th May 1996) received presentations from the three shortlisted developers. Minutes of those meetings will be forwarded as soon as they are available. Separate meetings of the Policy and Resources Committee and the Board are planned for the 20th May 1996 and a special meeting of the Council is scheduled for 23rd May 1996.

The Chair of the Advisory Committee is invited to all meetings of the Development Steering Group partially in order that he is in a position to convene meetings of the Advisory Committee should he consider it necessary.

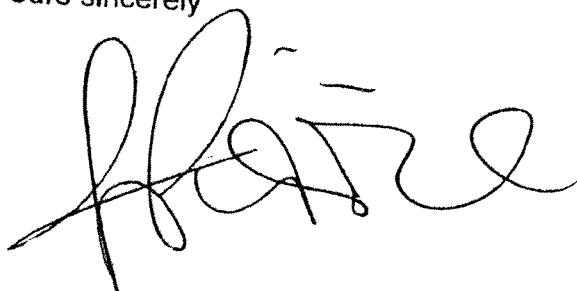
The board decision to put their legal work out to tender was made in the knowledge that Malkins have limited experience in contract matters and suitable expertise would

be required once a preferred developer was selected. The selection process for legal advice is following EU procedures due to the cost involved and no appointment has been made as yet.

With regards to the Council as trustee a further opinion has been obtained from Patrick Elias and I enclose a copy of that opinion together with a draft covering report of the Borough Solicitor for presentation to the meeting of the Council on the 23rd May 1996. You will observe that Mr Elias remains of the opinion that the Municipal Corporation is the Trustee rather than the individual Councillors.

For completeness I am sending you a copy of my letter to the Department of the Environment of the 5th October 1993. As you have been advised there are no contents of which you are unaware. The other information sent to the Department of the Environment was budgets and business plans for the various periods since 1993.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Elias', written over a horizontal line.

DIRECTOR OF CORPORATE SERVICES

APPENDIX 1

Revenue Deficits 1991/92 on

The quantification of the revenue deficits for which the Council is entitled to indemnification is as under:-

Year	Deficit £'000	Change in Working Capital £'000	Total £'000	Interest £'000	Cumulative Total £'000
1991/92	903	177	1,080	57	1,137
1992/93	1,510	244	1,754	213	3,104
1993/94	1,270	135	1,405	387	4,896
1994/95	1,022	(-)256	766	538	6,200
Sub-Total			5,005	1,195	
1995/96 (Expected Out-turn)	1,181		1,181	686	8,067
1996/97 (Budget)	595		595	845	9,507
			6,781	2,726	
1997/98 (Possible Deficit)	1,000		1,000	1,011	11,518
1998/99 (Possible Deficit)	1,000		1,000	1,214	13,732
			8,781	4,951	



rec'd 16/5/96

THE TREASURY SOLICITOR

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The Director of
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Alexandra House
10 Station Road, Wood Green
LONDON N22 4TR

Please quote: L90/6162/CJR/L8

Your reference: DOCS/JP/DS

Date: 16 May 1996

By Post and Fax

Dear Sir

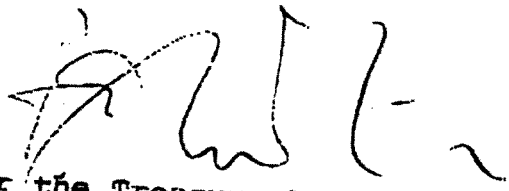
RE: ALEXANDRA PARK AND PALACE

I write further to your letter of yesterday's date and mine also of that date seeking further information concerning the letter that Mr Andrews was supposed to have written to me.

I now understand from you that Mr Andrews has not in fact written, although he may intend to do so.

I can only state at present that I have no reason to depart from the position hitherto expressed in my letter of 1 May, but that I must, of course, reserve the right to give full consideration to anything that Mr Andrews, if he chooses to write, has to say.

Yours faithfully


for the Treasury Solicitor

HARINGEY COUNCIL

Chief Executive

Civic Centre, Wood Green, London N22 4LE
Tel 0181 975 9700 Fax 0181 862 2906

CC Leader
J Pirrie
K Holder

bcc 1 Harris, Malkins

CE/GS/eml

Ms C Reay
The Treasury Solicitor
Queen Anne's Chambers
28 Broadway
London
SW1H 9JS

31 July 1996

Dear Ms Reay

Alexandra Palace and Park

Further to the interim reply to your letter of 1st May 1996 from the Director of Corporate Services I now set out a detailed response to the matters raised.

First of all may I say that I was surprised by your opening remarks. In your previous correspondence you had stated that you did not have a record of Mr Pascho's attendance at the meeting on 16th February 1995. The position as noted by the Haringey officers and stated in your letter of 19th February 1996 was cleared and confirmed by senior government officials at the Department of the Environment and the Charity Commission. I find it even more surprising that you now quote a version of events not entirely in line with the records of the other four persons present.

Leaving that aside I would now like to turn to the substantive elements of your letter.

First I wish to make some general comments to formally respond to those included in your letter. Secondly I outline the Council's action on the capital element of the deficit and the logic underpinning its decisions. Finally I lay out the arguments for seeking agreement to indemnification for further revenue deficits.

1. General Comments.

- a) You request a letter of confirmation from the District Auditor of the rates of interest applied to the operating deficits. This statement was supplied by the Director of Corporate Services on 13 May 1996. I trust that you find the content acceptable and this element may now be formally agreed.

Chief Executive Gurbux Singh

- b) The creation of a Member Steering Committee did not deprive the Board of any powers in relation to its decision-making functions for any new development. As you rightly state this body was set up by a joint meeting of both Policy and Resources Committee and the Alexandra Palace and Park Board with both considering and recording their voting intentions separately. In fact the Steering Group was a working party of both bodies with Members having delegated authority from their respective committees. The primary decision on development proposals were made by the relevant committees independently of each other. I can further confirm the Member Steering Group has not met since the completion of the selection process for the preferred developer and is in the process of being disbanded.
- c) On the question of independent legal advice to the Trust I would confirm that the Board has reconsidered its previous decision. It has now resolved to retain Malkins for all the day-to-day work of the Charity whilst seeking competitive quotations from legal practises to undertake the work associated with the leasing arrangements for the Palace. A specification is in the process of being compiled. Malkins will of course be invited to respond to the brief.
- d) In dealing with the revenue deficit you state that the Council knew from the outset that the total funds available would have to pay for any running costs during the period of reconstruction and quote the following :
 - (i) a report to Alexandra Palace and Park Committee in November 1981 showed how the dowry would be used to pay (among other things) the running expenses of the Park during the period of development at a rate of £400,000p.a. for four years; and
 - (ii) paragraph 7.1.5 of the Inspectors report (following the planning inquiry) said that £3million should be set aside from the total sums available to allow for possible revenue shortfall during the "build up" period.

I am afraid you are mistaken in your interpretation on both of these points.

The Inspectors report consists of detailed evidence from a number of sources including evidence from the Council. The Trust were anticipating a surplus of £720,000 from the operation of the Pavilion against which £400,000 would be offset for the running of the Park. This is laid out in paragraph 7.1.3 of the Inspectors report. In my letter of 23rd November 1995 to the Charity Commission, a copy of which was forwarded to you, I set out the actual position and you will note that the only year in which a surplus was generated was 1986/87 in the sum of £76,000. In each of the other years when construction was carried out there was an operating deficit. The "build up" period for which the Council was prudently intending to set aside £3million was for the four years after completion of the construction. This is further explained in paragraph 7.1.12 of the Inspectors report. I will return to the matter of the £3.0m later.

- e) In relation to the capital deficit most of your quotations taken from the Inspectors report were not statements from the Inspector but merely ill informed or biased opinions from various objectors to any redevelopment of Alexandra Palace. As an example you quote that "other expected benefits - from the Wood Green Shopping City project - for the local community (such as a traffic free High Road, a rail link and sports facilities) never materialised at all". That fault did not lie with the Development Team but with the Department of Transport changing policy and not finalising the necessary capital expenditure approvals. In fact the Inspectors report, throughout the summary at section 17, contains a number of references to the type of language used by objectors primarily to influence the Inspector against the development proposals. It is crucial to separate the comments made by objectors and those made by the Inspector for any objective conclusion to be drawn.
- f) I was also amazed to learn, at this late stage, of the Attorney General's concern as to whether the refurbishment project following the 1980 fire was appropriate for the Charity at all. The Trustees took advice from leading counsel, Mr Leonard Bromley, who stated that the Trustees had an obligation to substantially reinstate the fire damaged property. On the basis of that advice the Trustees commissioned the works of reconstruction. Further, the Inspectors report on the planning inquiry was presented to the Attorney General's colleague, the Secretary of State for the Environment on 15th March 1983. It is quite clear from that report that the Trustees were intending to carry out major reconstruction to the Palace and for the development proposals to be prepared by an in-house team. Finally, on this point, the Attorney General personally intervened in the passage of the Alexandra Park and Palace Bill 1985 through the House of Commons. The Attorney General was therefore, at that time, fully aware of the Trustees intention to refurbish the Palace and did not raise any concerns.
- g) I would welcome some justification of your statement that "Before the Charity can be in a position to make any reimbursement, it must of course be sure that its future running costs are fully and securely provided for." You agree that the Council is entitled to indemnification of certain of the revenue deficits plus interest. Surely any debtors first duty is to repay its creditors from the available assets. I fail to understand why you believe that the Trust should not be subject to this basic requirement.

2. Capital element of the deficit.

- a) I advised you on 14th June 1996 that the Alexandra Palace and Park Board have selected a preferred developer for carrying out the redevelopment of the Palace and Park. The proposals of the developer are to create a multi-activity leisure facility consistent with the objects of the Trust. In return for a 125 year lease the developers have offered the Trustees £11.775m to be paid when all the necessary planning and legal consents have been achieved. However it should be noted that £2m of the premium relates to a site for the Purcell School of Music within the Park and is highly unlikely that planning consent would be obtainable for such a project.

- b) The Council, recognising the limits of the potential capital realisable from the Trusts assets, met to consider its position on 30 May 1996. The Council agreed the recommendation of the Policy and Resources Committee that "without admitting that any part of the accumulated deficits were other than reasonably and properly incurred on behalf of the Charity, advise the Alexandra Palace and Park Board that the Council will not pursue its claim for indemnification beyond the revenue deficits plus interest 1987/88 onwards." The Council also agreed in principle to continue to provide funding, subject to its right to full indemnification, for annual operating deficits on Alexandra Palace and Park until the Palace becomes the responsibility of the preferred developer. In addition such funding is subject to the Council's satisfaction as to the progress made on the development proposals. I would add that in the debate at Council, none of the Board Members took part in either the discussion or the vote on the resolution.

The result of this resolution of the Council clearly confines the area of indemnification to the revenue operating deficits.

3. Further indemnification for operating deficits.

- a) The capital and revenue deficits are not, as you imply, so entwined that they are incapable of separation. The Trustees had received two reports from the Development Officer, one in the summer of 1986, the other in the summer of 1987, stating that the project if continued would overspend the resources available. In the report presented to the Alexandra Palace and Park Committee on 3rd August 1987 the overall deficit including the projected operational deficits was estimated to be £11.7million. The Trustees continued with the rebuilding project and also to finance the annual revenue deficit on the advice received from the then General Manager. The forecast was that annual surpluses in excess of £2million would be generated from subsequent income which the Trustees were further advised would be more than sufficient to repay the accrued deficit.

At the point the Trustees were aware that all of the available resources were required to meet existing commitments it was not feasible to direct the previously earmarked funding of £3.0m as outlined earlier in this letter to cover operating costs. To do otherwise would have meant the Trustees making a conscious decision to leave the Palace in a part built state without any potential for generating income to the Trust over a substantial but undefinable period. It would have been incomprehensible to consider this approach as acting in the best interest of the Trust. Clearly once all the available capital resources had been directed toward refurbishment the Trust was left seeking support for its operating deficit. In the circumstances this deficit can be clearly identified and dealt with in isolation from the capital.

- b) The Council is therefore seeking indemnification for the revenue deficits from 1st April 1987 as they had been aware since the summer of 1986 that all of the available resources would be needed for capital works. Interest however was only incurred from the time that the available cash was expended as identified in the interim report of Touche Ross.

In dealing with these operating deficits the principles attached to the decisions are no different to those adopted for 1991/92 onwards and can be dealt with accordingly.

- c) You have already agreed that the Council is entitled to indemnification of the operational deficits from 1st April 1991 which have been quantified as £6.2m at 31st March 1995. The operational deficits, plus interest have been projected to rise to £11.518m at 31st March 1998 and £13.732m at 31st March 1999 as it is not anticipated that the premium from the developer will be received until about that time. The details underlying the projection are attached at Appendix 1.

The Council is seeking agreement to its rights to further indemnification to the operating deficits from 1st April 1987 as shown below:

	£M
1987/88	1.528
1988/89	0.596
1989/90	0.231
1990/91	0.044
	<hr/>
	2.399
	<hr/>

- d) To conclude, the decision of the Council not to pursue its claim for indemnification of the capital deficit effectively resolves the question of the liability of the Trust for all capital deficits. All that remains is formal agreement to the Council's claim for indemnification prior to 1991/92 using the same principles adopted for later years.

In summary therefore I am seeking :

- a) your agreement to the Council's right of indemnification to the operational deficits, plus interest, from 1st April 1987;
- b) you note the Council is no longer pursuing its claim for indemnification of the capital deficits together with the reasons for its decision;
- c) your agreement that the Trustees are no longer restricted from entering into irrevocable commitments;

- d) you advise the Charity Commissioners that they can proceed with the scheme to extend the powers of the Trustees.

I should be obliged if you would bring this letter to the attention of the Attorney General.

Whilst appreciating the delay in responding to your letter, I believe that both the Trust and the Council has achieved much in the intervening period. Significantly, the issue of the capital deficit is all but resolved and the Trust has appointed it's preferred developer. The developer is anxious to have a degree of clarity around the parliamentary scheme and is already committing financial resources on preparatory work. It cannot be in the best interests of the Trust to allow matters to drag on at a time when all of the components are in place to resolve the issues. It would be helpful if you could deal with the outstanding matters expeditiously and assist in achieving a speedy conclusion.

As always if there are any points you do not understand or wish further clarification on I and my colleagues are willing to provide the assistance necessary or indeed join with you in conference with Counsel.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Gurbux Singh', with a long horizontal flourish extending to the right.

Gurbux Singh
CHIEF EXECUTIVE

APPENDIX 1

Revenue Deficits 1991/92 on

The quantification of the revenue deficits for which the Council is entitled to indemnification is as under:

Year	Deficit £'000	Change in Working Capital £'000	Total £'000	Interest £'000	Cumulative Total £'000
1991/92	903	177	1080	57	1137
1992/93	1510	244	1754	213	3104
1993/94	1270	135	1405	387	4896
1994/95	1022	(-) 256	766	538	6200
Sub-Total			5005	1195	
1995/96 (Expected Out- turn)	1181		1181	686	8067
1996/97 (Budget)	595		595	845	9507
			6781	2726	
1997/98 (Possible Deficit)	1000		1000	1011	11518
1998/99 (Possible Deficit)	1000		1000	1214	13732
			8781	4951	



5/8

HARINGEY
CIVIC CENTRE
5 AUG 1996
CE

THE TREASURY SOLICITOR

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(10)

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Please quote:

L90/6162/CJR/L8

f K.H.

Your reference:

CE/GS/eml

Date:

2nd August 1996

Dear Mr Singh

ALEXANDRA PARK AND PALACE

Thank you for your letter of 31st July 1996 which you sent to me by fax yesterday.

I am grateful for your confirmation that the Council is no longer maintaining any claim to an indemnity in respect of the capital debt.

Turning to the revenue deficits, I note your contentions about the deficits for the years from 1987/1988 to 1990/1991, however you have not commented on the point made under the heading "Year ended 31st March 1988" on page 2 and the first full sentence on page 3 of my letter of 1st May 1996. If you wish to submit any further evidence or argument on this point, I should be grateful if you could let me know shortly.

I am now in a position to reply on the figures (including interest) which you set out in the Appendix to your letter of 13th May 1996:

- (1) For 1991/2, 1992/3 and 1993/4, your figures are agreed.
- (2) For 1994/5, final agreement on the figures must wait until the audit has been formally concluded. But the figures in your Appendix are provisionally agreed, subject only to any further changes as a result of the audit.
- (3) I cannot yet agree the figure for 1995/6, which at this stage is based only on the "expected out-turn". But my letter of 1st May 1996 sets out the principles of indemnification which would apply to

that and any future years.

As to the remaining points in your letter of 31st July, including those relating to the revenue deficits for 1987/1988 to 1990/1991, I shall let you have a reply on these as soon as possible.

Yours sincerely

Catherine Reay

CATHERINE REAY
for the Treasury Solicitor