



Haringey Council

Agenda item:

[No 1]

Alexandra Palace and Park Trust Board

On 16/04/09

Report Title. Further Independent Review of a licence to operate granted to Firoka and the losses caused to the charity.

Report of **Director of Corporate Resources and Chief Financial Officer**

Signed :

J. Parker 21/4/09

G. O'Brien 21/4/09

Contact Officer : Julie Parker --- 020 8489 2688 ---
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Wards(s) affected: **Alexandra Ward**

Report for: **Non-key decision**

1. Purpose of the report (That is, the decision required)

- 1.1. To advise the Trust of the investigation commissioned at the request of the Trustees into the conduct of the General Manager/consultant Keith Holder in respect of the granting of a licence to Firoka (Alexandra Palace) Ltd in May 2007.
- 1.2. To recommend the actions the Board of Trustees should take in response to the investigation.

2. Recommendations

- 2.1. It is recommended that the Board of Trustees accepts the recommendations of the 2nd independent review.
- 2.2. It is recommended that the Board considers the report of the Trust solicitor in part 2 of the agenda and agrees to take no further action on this matter.

3. Chief Financial Officer Comments:

- 3.1. The Board of Trustees are responsible for the governance arrangements of the Trust and need to be satisfied that strong arrangements are in place. The first review identified weaknesses and the Board is taking action to address those weaknesses.
- 3.2. This report has identified the financial consequence to the Trust of the weaknesses in governance in respect of the licence and I concur with the financial assessment that has been made as this fits within a reasonable range considering the overall Trust deficit for that year, which was higher than in previous years.
- 3.3. I set out in the exempt part of the agenda my advice on the prospects of recovering the losses detailed in this report and the cost effectiveness of any legal action.

4. Monitoring Officer Comments

- 4.1. The legal implications are set out in the Trust solicitors report in the exempt part of the agenda and I concur with his recommendations.

5. use of Appendices/Tables and Photographs

- 5.1. The report of the further independent review conducted by Martin Walklate.

6. Local Government (Access to Information) Act 1985

- 6.1. The report of the further independent review conducted by Martin Walklate
- 6.2. Reports and minutes of the Board in 2007.

7. Background:

- 7.1. At the Trust Board meeting on 26th September 2008 the Trustees received an independent review into the development of a licence to operate granted to Firoka (Alexandra Palace) Ltd. undertaken by Martin Walklate.
- 7.2. At that meeting the Trustees requested that a further investigation be conducted into the conduct of the consultant – Keith Holder – with respect to the authorisation, award, monitoring and termination of the licence – that report to cover his liability for any losses caused to the charity and its trading company and the merits or demerits of any action to recover such losses.
- 7.3. The Director of Corporate Resources on behalf of the Trustees commissioned Martin Walklate to undertake this second investigation.
- 7.4. This review is now complete.

8. Content

- 8.1. The terms of reference of the second independent review are set out in para 15 (page 4) of the attached full report Annex 1.
- 8.2. This second review builds on the contents of the first review. The conclusions of the first review are set out in para 2 page 1 of the full report. – attached.
- 8.3. Some elements of this report are confidential and these are in the exempt part of the agenda. The report can be read in a self contained way without detailed reference to those documents.
- 8.4. In the exempt part of the agenda is a confidential report containing the advice of the Trust's solicitor on the loss to the charity caused by the granting of the licence to Firoka and the possibility of recovery.
- 8.5. The officers of the council concur with the recommendations of that report.

9. Summary

- 9.1. The detailed findings of Martin Walklate's second review are set out in his report attached and can be summarised:-
 - a) This review was commissioned following the consideration of the reports into the development of the license to operate with Firoka (Alexandra Palace) Ltd which took place at the meeting of Trustees in September 2008. This second report should be read in combination with that first report which provides much contextual and background information.
 - b) New information provided during this review creates further confusion as to whether the licence was necessary in the first place. It emerges that a briefing note was prepared by the then General Manager which strongly argues against the need for a licence. Despite this, he makes no reference to this when recommending the introduction of a licence only a matter of days later. His allegation that his was a result of instruction was disputed.
 - c) This report concludes that entering into and maintaining the licence has led to losses to the Trust in the region of £1,500,000. The Trustees were not given financial information of the effect of the licence continuation during the course of the licence operation nor were they given the opportunity to consider whether they wished to revoke the licence at various stages of that operation.
 - d) Despite this, in Martin Walklate's experience as an investigator of such matters and subject to legal advice, analysis of the contracts of employment and consultancy suggests that little opportunity for successful legal action for recovery exists and the benefit would be exceeded by the costs of such action.

- e) The report concludes that ensuring a culture and process of good governance should remain a key focus for the Trustees.

Role and liability of the General Manager/Consultant in regard to losses sustained in entering into the licence to operate

Summary

This review was commissioned following the consideration of the reports into the development of the licence to operate with Firoka (Alexandra Palace) Ltd which took place at the meeting of Trustees in September 2008. This second report should be read in combination with that first report which provides much contextual and background information.

New information provided during this review creates further confusion as to whether the licence was necessary in the first place. It emerges that a briefing note was prepared by the then General Manager which strongly argues against the need for a licence. Despite this, he makes no reference to this when recommending the introduction of a licence only a matter of days later. His allegation that this was a result of instruction is disputed.

This report concludes that entering into and maintaining the licence has led to losses to the Trust in the region of £1.500,000. The Trustees were not given financial information of the effect of the licence continuation during the course of the licence operation nor were they given the opportunity to consider whether they wished to revoke the licence at various stages of that operation.

Despite this, in my experience as an investigator of such matters and subject to legal advice, analysis of the contracts of employment and consultancy suggests that little opportunity for successful legal action for recovery exists and the benefit would be exceeded by the costs of such action.

The report concludes that ensuring a culture and process of good governance should remain a key focus for the Trustees.

Note:

Some aspects of this report are subject to restricted circulation to the Trustees only because of either the commercial confidentiality or the personal nature of the information. In these cases the word <exempt> will replace the word, sentence, paragraph or section in question.

Introduction

1. In September of 2008 the Alexandra Palace and Park Trust received a report into the circumstances surrounding the development and execution of a licence which allowed Firoka (Alexandra Palace) Ltd to operate at the Palace. The report identified a poor governance framework both for the development of the licence and the decision process which approved it.
2. That first report's conclusions were as follows:
 - This report is prepared upon the instruction of the Director of Corporate Resources of the London Borough of Haringey.

- In May 2007, the Alexandra Palace and Park Trust entered into a licence agreement with Firoka (Alexandra Palace) Ltd. This licence enabled Firoka (Alexandra Palace) Ltd to operate within the Alexandra Palace buildings. It provided staffing resources at no cost, building and other infrastructure facilities at no cost and it transferred existing negotiated contracts. It entitled Firoka (Alexandra Palace) Ltd to operate the Ice Rink. Firoka retained all profits and sustained all losses.
- The licence was granted as a way of maintaining Firoka (Alexandra Palace) Ltd's interest in a development project for which they had successfully tendered. It was believed that Firoka were disappointed in delays in completing the full lease arising from the need for Trust Commission approval which had repeatedly been postponed. The licence also achieved the transfer of risk to Firoka of poor anticipated trading results and it gave some continuity to staff affected by the transfer.
- Whilst there is some minor conflict over the extent and evidence of the reality of these anxieties, when taken at face value it is apparent that there was a need for some mechanism to retain Firoka's interest and a good business case can be made for the use of such a mechanism.
- No other mechanism was researched or considered. No evaluation of any alternative took place and records have not been produced which would justify all the concessions given in the licence although full explanations as to the circumstances and intent have been reported through interview and other correspondence.
- The report to Trustees seeking authority for the licence was hurriedly produced; it was tabled at the meeting and contained no justification for the licence although it does present the need for a mechanism within the context of the anxieties listed above. No understanding of the financial effects of the licence are given in the report and no evidence can be found that this was provided, even in the most basic form, at the meeting itself.
- Arrangements for ensuring that the Trustees were sufficiently informed to make such a key decision were scant. Confusion exists over who was seen as responsible for briefing Trustees. The key decisions of the Trustees, to assign the APTL licence and to seek a management arrangement for the Ice rink, were taken as no more than a framework by those who then developed the licence. The licence differs in many key respects from the APTL licence and rather than seeking a management agreement for the Ice Rink it is simply subsumed into the new licence.
- No opportunity is given to Local Authority staff to comment either on the report or the subsequent licence. Despite the level of change, Trustees are not subsequently invited to consider whether the revised licence meets their expectation. The licence is not subjected to any final legal scrutiny before signature.

- Whilst the case for such a mechanism is strong, the licence was generated without any consideration of alternatives. The governance regime surrounding its production, authority and agreement is weak.
3. As a result of considering the first report, the Trustees of the APPT commissioned a further review to examine the role and potential culpability of Keith Holder, who was the General Manager at the time of the licence development and approval and who was subsequently a consultant acting on behalf of the Trust. <exempt 1>
 4. <Exempt 2 >. This review deals with the role, conduct and culpability in law of Keith Holder although inevitably the investigation uncovers further shortfalls in the actions of others.
 5. The terms of reference for this subsequent review are enclosed within this report. In short, the terms of reference seek to establish what the loss to the Trust was by entering into and sustaining the licence. They then request examination of the extent to which this can be evidenced and to what degree the actions of Keith Holder contributed to this loss. It will then be a subsequent decision of the Trustees acting upon legal advice whether they believe any form of litigation is justified or warranted although observations and considerations on this issue will be discussed in this report.
 6. I have commenced the report with some observations that I believe the Trustees should have in mind whilst reading the report.
 7. In assembling the factual basis for this report I have had considerable help from, and placed reliance on, information gathered and provided by staff in the Legal Services Division and the Corporate Finance Division of the London Borough of Haringey as well as support from the Legal Advisor to the Trust, officers of the Alexandra Palace and Park Trust and the trading company.

Context

8. The full context to this report is covered in the earlier report to Trustees and its accompanying summary. Obviously, the further work in this report has produced additional evidence which helps to clarify, or in some cases further confuse, some of the unknowns that were presented in that report. None of this new information weakens the justification for the conclusions and recommendations in that report. On the contrary it generates further evidence of weak management responses, poor information flows and inappropriate behaviour and activity.
9. It may be useful to commence this report with some issues that the Trustees may wish to keep in mind as they consider its content and findings. It is now possible to present a refreshed understanding of the context of the decision making process in regard to the licence development and the reality of the outcome.
10. As intimated in the first report, the actions of those involved appears to stem from a certainty of belief that the transfer to Firoka would be taking place in the early summer of 2007 and that all actions should be driven towards this outcome and conditioned by its effect. Although statements are made about the relative (admittedly low) probability of the

Judicial Review succeeding, there was no real contemplation that it would succeed and no advice proffered as to the potential outcomes should this happen. This gave a short term nature to all the decisions taken in regard to the company and the Trust and, indeed, it is argued, the potential for losses that might be incurred.

11. Secondly, and partly flowing from the above point, Trustees must consider the report in the context of a series of time frames. Judgements made at the creation of the licence against a background of traditionally poor trading in the early months of the year may not be as relevant at the point when a) consideration to renewal of the licence should have taken place on August 1st 2007, b) when the Judicial Review was determined on the 5th October 2007 and c) as the busiest, and most profitable, part of the year was approached beyond this date.
12. Thirdly, Trustees will receive formal legal advice on whether this report produces any evidence which suggests that further action may be warranted. This is not my area of expertise and I am not capable of giving professional advice on such a matter. However, my relatively extensive experience in the field of criminal and civil actions suggests that Trustees should give careful regard to the tests that the courts will apply. These generally extend beyond proof of error into considerations of personal benefit, wilful negligence and deliberate harm. Trustees should also give consideration to the costs of such an action both directly incurred in legal costs but also the management overhead which such action will produce.
13. Timescales for court proceedings are often very long. They should also give consideration to the impact that such action will have on the reputation of the Palace and its Trust and the ability of the organisation to attract investment and business during such a period. These matters represent a difficult calculation for trustees in taking these issues into account against the need to take proper action in the interests of the Trust.
14. Finally, Trustees may wish to consider issues of the culture of the organisation which this report implies. Investigations of this kind depend upon documentation, contracts, codes of conduct and protocols. They centre on the way in which individuals have reacted to their stated responsibilities. Views expressed casually in emails may implicate or relieve individuals in relation to those responsibilities. In such a situation as this, where the reactive nature of an individual's approach to their responsibilities is being evaluated, I believe the Trustees should balance this with their view of the extent to which senior officers of the trust should have acted on their own initiative and taken steps to protect the Trust even though it was not their direct commission to do so.

THE TERMS OF REFERENCE

15. The terms of reference document states:

“Proposed terms of reference for the second stage of Martin Walklate’s independent review of Alexandra Palace into Keith Holder. This will result in officers and the Trust Solicitor reporting back to the board with a recommendation on future action.

- What was KH’s precise role in securing that the licence was signed on 04/05/07?
- was the signature of the licence outside the authority given by the Board on

24/04/07?

- What losses were caused to the Trust by entering into the licence with Firoka? Can these be evidenced?
- How far was KH responsible for any losses by breach of his duties as an employee before May 2007?
- How far was KH responsible for any losses by breach of his consultancy agreement with the Council after April 2007
- Did KH commit a breach (under clause 29.2) of his consultancy agreement with the Council
- What action was taken by KH to monitor the financial and other effects of the Firoka licence on the Trust and APTL
- What action was taken by KH to monitor Firoka's compliance with the licence terms
- Why was there delay on the part of DL and KH after the judicial review on 05/10/07 in considering the case for termination of the licence and reporting to the Board to secure this decision?

Once this work is complete

Trust Solicitor and section 151 officer to advise on the following with input from the Council's legal team.

- What are the prospects for recovery of any losses (identified above) from KH personally
- Would the commencement of legal proceedings be likely to be cost effective for the Trust."

THE FINDINGS OF THE REPORT

To assist Trustees a list of key dates during this process is attached as appendix four.

New Information relevant to the Trustees consideration

16. Prior to consideration of the terms of reference, I believe that it is important that I bring to the Trustee's attention information obtained during this second review which has an impact upon both their considerations of culpability but also matters of governance considered in the reports already received.
17. In his invitation to interview, Keith Holder was informed of the terms of reference of this review, invited to be accompanied and invited to provide a written response if he so wished. Upon his arrival at the interview of the 23rd October 2008 he produced a letter addressed to me which was accompanied by various appendices. (The letter and appendices are attached as appendix one to this report although two items are restricted for reasons of commercial confidentiality.)
18. His submission papers are:

Letter –	Keith Holder to Martin Walklate 22 nd October 2008
Email –	Keith Holder to Cllr. C Adje – 17 th April 2007
Attachment –	Chairs Briefing note –

Email -
<Exempt 3>
Letter-

Automatically generated response acknowledging receipt
Keith Holder to Cllr. Matt Cooke

19. The latter items in this correspondence are considered where appropriate in discussion of the associated term of reference. Particular attention however is now given to the letter addressed to me and the attached copy of the Chair's briefing note sent to Cllr. Adje.
20. In summary, Keith Holder presents a version of events leading up to the report on the licence and its subsequent development. According to that version:
 - A meeting took place between Firoka, Cllr. Adje and Keith Holder on the 11th April with further telephone discussion between the Cllr. Adje and Kassam over the following weekend.
 - A discussion between the Chair and a Firoka representative on the Monday
 - The receipt of the draft order on Monday 16th April giving a clear indication that the matter was soon to be resolved
 - Further conversation with the Trust's legal advisors (not specified who by and with) on Tuesday 17th April
21. This led to the production of the briefing note contained as part of appendix one. This was sent to Cllr. Adje on the 17th April and automatically acknowledged as being received.
22. I do not intend to evaluate the full briefing note at this stage but it is attached for Trustees to consider. I believe that the thrust of the document is that Keith Holder's strong advice in this note is that no licence or similar mechanism is required. This is summarised in the final paragraph (7.3)

"Whilst there have been irritating delays and frustrating questions to be dealt with throughout, the process is on track to deliver albeit not in a timeframe of our choosing. Nevertheless it does not appear that we have to take any action at this point other than to keep a watchful eye on progress"
23. The briefing note gives the following strong officer (Keith Holder) interpretation of the current position with Firoka at that time
 - 'Kassam' had 'no easy escape' from the transfer arrangement
 - That 'Kassam' would be challengeable for non performance if he did withdraw
 - That no 'methodology' was available to 'Kassam' which would allow him to 'get out'
 - That a possibility existed that the whole 'I want out' scenario might simply be a mechanism to launch an inducement argument
 - Caution should be exercised
 - That there do not appear to be any grounds for a 'rushed decision'

- That any decision to financially assist 'Kassam' would generate public opposition and that any assistance would have to be restricted to some legitimate expense prior to transfer.
 - That the process is on track to deliver and that no further action is necessary at this point other than to keep 'a watchful eye' on progress.
24. This, taken in the context of the detailed briefing note, would appear to be direct advice to Cllr. Adje that no form of intervention was necessary and that the position of the Trust was appropriately protected. The briefing note advocates caution, states that there are no grounds for a 'rushed' decision and offers no support for any inducement to Kassam whatsoever.
25. Trustees may consider that this submission, whilst underlying the anxiety about withdrawal expressed by some in the first report, does not give credence to any necessity for a licence given the level of protection that the Trust enjoyed.
26. I would wish to make it clear that Keith Holder was given every opportunity at his interview for the first report in the summer of this year to produce such documentation and explanation and did not do so. The question put to him was:

"Did you prepare or contribute towards any background papers or briefings relating to that licence development?"

*Either for;
Other company officers/directors
The Board either as an entity or for individual trustees
Local Authority Officers
Local Authority Members
Legal advisors"*

27. His response as recorded in his signed interview note was:

"Keith prepared the tabled report that went to the Trustees on the 24th April 2007. He confirmed that no other papers were produced for the board of trustees. The board of directors had been provided with a report and written resolutions which evolved from that report were signed by the majority of the directors. "

28. I would have to say that the above response is, in the light of the material now produced, at best, economical. Had the material and explanations been provided at the time of the first investigation it would have allowed a much fuller picture of events to have been known and may have guided Trustees into other decisions? The submission indicates a number of inconsistencies between actual events and those provided to my initial investigation.
29. The letter to me of the 22nd October raises a number of issues which I believe need to be confirmed or addressed.

1. Did Cllr. Adje approach Keith Holder and 'made it clear' that the arrangements with Firoka were not to be jeopardised?

2. Did Councillor Adje have discussions with other senior politicians who had agreed that Firoka could operate on the same basis as the lease? Was this subsequently confirmed in discussions held in October and November of 2007?
 3. Keith Holder's briefing note suggests that the Leader of the Council, although aware of the licence arrangement, was not aware that this included the retention of profits. This position is contrary to the finally agreed licence and the decision not to include profits would have impacted considerably on the losses made by the Trust over the licence.
 4. Keith Holder states that he was instructed to produce the report that went to the Board on 24th April 2007. Did Councillor Adje actually give such an instruction and did he have the authority to make such an instruction.
 5. Did he similarly instruct David Loudfoot and Ken Harington to sign the licence?
 6. Keith Holder alleges that the response from Firoka to many of the difficulties in resolving disputes on the licence was that 'Cllr Adje agreed the detail and will confirm our view'. This is clearly contrary to many of the points raised in his initial interview. It is important to determine whether Councillor Adje continues to maintain that he had no involvement in the detail of the licence either in its composition or in the discussions with Firoka that led to the licence and its terms?
30. Cllr. Adje has been given the opportunity to respond to these points and the issues surrounding the licence development. His response is attached at appendix two. I have taken that response and interposed this with the questions that were put to Councillor Adje to aid comprehension of his answers. This is attached at appendix three. In addition I have contacted the, then, Leader of the Council, the Chief Executive and the labour group members on the Board at that time to receive their views on what happened.
31. Councillor Adje's submission is important to this process. Cllr. Adje presents a submission which contradicts many aspects of Keith Holder's view of events. His chronology of events appears to indicate that although the alleged contacts took place they did so for differing reasons. Whilst accepting that he saw the briefing document prepared by Keith Holder he does not accept that he in any way rejected it or 'instructed' Keith Holder to proceed with the licence despite the advice given.
32. This is important because Keith Holder may well consider that he was working under direct political instruction and therefore, all his actions could be both seen as being in 'good faith' or following the wishes of the majority party whom he perceived as having the right to give him instruction. The apparent ambivalence of Councillor Adje on the matter denies this and presents Keith Holder as the architect of the whole licence agreement and its major motivator. Councillor Adje presents himself as someone following Keith Holder's advice and leadership almost without question. He quotes Keith Holder's thanks to him for allowing him (Keith Holder) to work independently. He sees Keith Holder as being the instigator and author of the report to the Trustees and the person who determined that only limited information should be included for reasons of confidentiality. He presents himself as having little or no contact over the licence agreement following the Board meeting although this appears to contradict not only the submission by Keith Holder but information provided in interview by David Loudfoot as part of the initial investigation.

33. It is also difficult to understand Councillor Adje's making no reference to Keith Holder's apparent U-turn from being against the licence as stated in his briefing note to promoting it within the officer report.
34. Cllr. Adje's submission does accord with some aspects of Keith Holder's version. He confirms that the Leader of the Council was involved in the discussion but, very importantly, confirms that the Leader's understanding did not extend to the inclusion of profits and losses in the licence. Had the licence not included retention of profits (which I assume to include profits from the Ice Rink) the impact on the Trust finances would have been negligible or even favourable. Where the submissions do not accord is on the question of whether Cllr. Adje knew that the licence should include profits and losses. Keith Holder maintains that Councillor Adje led on this matter. Cllr. Adje states that there was no such discussion.
35. Cllr. Meehan's recollection only supports Cllr. Adje's submission in the most general terms. He states:

'In answer to your question I would make clear that I can recall only one occasion *where* I discussed the matter in detail with Cllr Adje. This was an informal meeting which took place in my office at River Park House probably during April 2007. Cllr Adje brought to my attention that Firoka were becoming impatient at the length of time it was taking for them to assume the responsibility for the functions of the Alexandra Palace Trading Company Ltd. Both Cllr Adje and myself were in agreement that it would be helpful for the matter to be brought to a conclusion as early as possible.

At this discussion it was my understanding that Firoka would be taking on the functions of the Alexandra Palace trading company on the same terms as the trading company therefore there was no discussion of terms and conditions relating to the licence.'

After answering specific questions put to him that support the above statement, Cllr. Meehan concludes by stating:

'I have had no discussion directly with Firoka. I may have been introduced to Mr Kassam at a Haringey event but other than that I have had no discussions with the company. As Leader of the Council I made it a practice not to discuss such issues with companies unless officers of the Council were present and meetings noted.

36. The Chief Executive similarly responds that she was not involved in any meetings at the time of the licence development nor given the role to convey any matters to Keith Holder. Her role and involvement came later when the matter of the licence revocation was under consideration.
37. I have received two written responses from the Labour Members on the Board at that particular time. The questions that were posed to them were:
- Can you recall any discussion when the issue of a strategy to retain Firoka's interest was discussed? If so, when and who with?
 - At what stage can you recall being made aware of the need for a licence or similar mechanism?
 - Who made you aware and how?

- What were the reasons given to you for the need for such a mechanism?
 - Were you advised as to any financial consequences of the 'licence'?
 - Did you realise that the granting of the licence gave Firoka the right to retain all profits?
 - Did you realise that the granting of the licence would bring about the loss of the annual licence fee to the charity?
 - Did you realise that the income from the Ice Rink would be included in the licence and that the charity would forego its income accordingly?
 - Were you aware of how long the licence would be operative for?
 - Were you asked to consider the continuation of the licence in August 2007?
 - Were you asked to consider the revocation of the licence at any point prior to the actual decision to revoke in December 2007?
38. Councillor Egan, whilst correctly asking that his recollections be considered within the context that a considerable time frame has elapsed since these events took place, recalls that discussions did take place at the Board Meeting and Committees. He believes that Keith Holder led on these matters and brought to the Boards attention the impatience of Firoka, the need for some form of interregnum, the need to facilitate the transfer and to regularise the situation with staffing. He has some recollection of, or assumed that there was, a need for the mechanism to allow Firoka to carry on the business from APTL with liability for losses and retention of profits.
39. Councillor Peacock has responded by answering 'no' to all the questions posed. I have spoken to Cllr. Thompson on the telephone although due to his personal circumstances it was not possible to explore the matters before this report had to be concluded. I do understand that his recollection is limited due to the passage of time and the fact that he was undertaking other Council duties during this particular period.
40. Finally, on this issue, Keith Holder makes the point that Firoka in their negotiations over the termination of the licence have cited Cllr. Adje as the person who agreed various matters. Cllr. Adje refutes this and presents arguments demonstrating that this was neither practical nor according with custom and practice. As Trustees will be aware from the first report, Firoka have refused to respond to questions regarding the licence development.

Conclusion on this matter

41. The two submissions directly contradict each other in many respects and, in the most important of all regards, present opposing views as to who the architect of the licence intervention was and who determined that it was even necessary and whether the subject of profits was discussed between them. In other contexts this difference may be important and may require resolution. From the point of view of this review it weakens any reliance that can be placed on either submission from an evidential point of view. The contributions

from Councillor Meehan, Councillor Egan and Councillor Peacock, when taken together, are unable to really give support to either submission.

42. In the context of the terms of reference as set, paraphrased as 'how much was lost and can civil action be taken against Keith Holder for recovery' the issue is about whether Keith Holder can claim that he was acting in good faith when he produced the licence.
43. To this end he can rely on his submission and Cllr. Adje's response that:
 - Cllr Adje was given the opportunity to be fully aware of his actions up to and including the point of the Board meeting,
 - He could believe that the Leader of the Council was similarly aware of the actions being taken,
 - Whilst both the Chief Executive and Councillor Meehan are clear that they were not party to any such meeting or subsequent instruction and Councillor Adje does not accept that he 'instructed' Keith Holder over this matter, Councillor Adje does imply that a meeting took place. It is plausible that Keith Holder can claim that Councillor Adje's submission supports his view that the impression he was given is that the strategy of the licence mirroring the lease provisions had the support of these individuals.

Matters remain contradictory as to whether, in including the profits from occupation, Keith Holder was acting over and above any given or implied authority and consequently beyond the 'good faith' that his contract of employment required.

RESPONSE TO THE TERMS OF REFERENCE

44. The following represents a response to the terms of reference. However, it is essential that they are read in the context of the report considered by the Trustees in September 2008.

What was KH's precise role in securing that the licence was signed on 04/05/07?

45. This matter is important as the signing of the licence committed the Trust to the beginnings of a process which results in considerable financial loss.
46. As at 4th May 2007 Keith Holder was a consultant employed by the London Borough of Haringey on a consultancy contract for the purposes of discharging activities for the Trust. His contract makes no specific reference to either securing the signing of the licence or, until an amendment in December 2007, any role regarding the licence itself. However, in the first few days of his contract he concludes the licence, presumably concludes negotiation with Firoka (Alexandra Palace) Ltd and, again presumably, arranges for its signature by the three parties. His actions when taken with his role as set out in the first report strongly indicate that he remained the driving force for concluding the licence during this time. To the extent that he was following the wishes of the Board there is nothing wrong with this even though it may have not been specific in his contract to do so.
47. Keith Holder's recollection is that he felt he may have been on holiday during the time of the

actual signing of the licence and that he made no practical steps to obtain its signature by any of the parties.

48. That Keith Holder prepared the document is not disputed although his authority for its content is. The responsibility for signing the contract by the General Manager to the Trust and the Company Secretary to the Company must be held by them. Both are senior managers who should not sign anything without ensuring that they have both the authority to so do and that, in signing the document, they are acting in the best interests of their respective organisations.
49. Some sympathy can be attributed to the signing parties, particularly the General Manager who maintains that he was instructed to sign the licence at a meeting attended by Cllr. Adje and Keith Holder. He would have been placed in some difficulty by such an instruction but arguably dealing with such difficulties is an essential element of his role. It should be noted, however, that Cllr. Adje states that he gave no such instruction and that he cannot recall such a meeting. What is clear is that Cllr. Adje was kept informed of the signing process by David Loudfoot.

Was the signature of the licence outside the authority given by the Board on 24/04/07?

50. The first report concluded that the licence signed on 4th May 2007 went beyond the authority given by the board on 24th April 2007 in the following regard:
 - The licence agreed with Firoka differed materially from the terms of the licence with APTL. It was the express decision of the Board to assign the terms of the APTL licence.
 - The inclusion of the ice rink income in the licence does not accord directly with the Board decision to seek a management contract for this area
 - There is some doubt as to whether the power to sign the licence lay with the officers of the Trust given a) that this was a matter of considerable strategic importance, b) that no express authority was given at the meeting of the 24th April 2007 and c) custom and practice may indicate that signature by the officers was inappropriate.
51. In his interview, Keith Holder felt that the General Manager did have the authority to sign the document particularly given the report to the Trust and his claim of the clear political indications given by Cllr. Adje following receipt of the briefing note.
52. He felt that the delegations to officers allowed him to enter into operational matters on behalf of the Trust. He did not see the licence development as strategic within the context of the agreed strategy for transfer.
53. He also felt strongly that the licence was a short term expedient and, as such, confirmed his view that he, and the subsequent general manager, were acting 'operationally' in giving their signature.
54. It would be open to Keith Holder to argue that he was reasonably entitled to treat the Chair's "instruction" as a proper instruction of his employer given the long custom and practice at Haringey. He may well say that the labour Members of the APPB were privy to

the briefings and fully aware of the main thrust of the licence proposal despite the rather ambiguous nature of the report/minute. There will need to be legal advice as to whether a claim could succeed in Court having regard to the above matters .

What losses were caused to the Trust by entering into the licence with Firoka? Can these be evidenced?

55. This is one of the most complex and difficult parts of this report. The calculation of loss can be considered from a number of perspectives. The standards and quality of the information held at Alexandra Palace to substantiate any claim for loss are variable. Staff turnover in the last eighteen months again gives rise to a lack of continuity. In such circumstances the answer to these terms of reference can descend into an academic accountancy exercise of allocation and estimation which would be unhelpful. It is very important to note that the calculations presented in this report are for indicative use only and are intended to give Trustees an understanding and awareness of the sums involved. They do not derive directly from the management accounts of the Trust and cannot be compared directly with them.
56. In consequence, I wish to begin by giving the rationale behind my approach to this element of the terms of reference. This is simply an attempt to assist Trustees with my thinking in order that they can determine whether it is valid and should be given weight in the consideration of their deliberations.
57. It is my view that in any trading situation, any income received whatsoever represents a contribution to overheads and, possibly, profit. Any income forfeited, must, by definition, represent a reduction in that contribution. If that income forfeited brings about a strategic benefit to the organisation then it cannot be considered a loss. If it simply flows into the hands of others, then a loss results.
58. When the Board gave agreement to assign the terms of the APTL licence to Firoka (Alexandra Palace) Ltd it did so on the advice of its then General Manager that it would bring about a number of benefits. That is; it would help to secure the likelihood of Firoka continuing with the main lease, it would settle staffing concerns and it would assist in the transfer of risk. If these issues are accepted (and the first report makes comment on the lack of direct evidence supporting some aspects of these matters) then trustees should have been faced with a business case comparing the cost of long term failure to secure Firoka against the costs and loss of income occasioned by the agreement to the licence. In these circumstances the 'loss to the Trust' would be the resultant calculation.
59. It is clearly not possible to create a hypothetical model that attempts to justify the broader definition of a 'loss to the Trust'. All that can sensibly be presented here is an assessment of the individual elements of the licence and the impact on the Trust of the inclusion of such sums.
60. However, the decision to enter a licence can be considered a response to risk. Risk can be defined as the relationship between impact and likelihood. In most risk models the relationship is defined by a multiplication of impact by likelihood.
61. Impact in this case was undoubtedly considerable. Various figures have been considered but it is not unreasonable to assume that a withdrawal by Firoka would lead to an increase costs

in any other bid if it could be found. Keith Holder, in his first interview places these in the region of £10m. This figure is derived from an approximation of the costs of retendering, interim management and, most significantly, the increase in development costs between the received tender and modern day prices.

62. Likelihood is more difficult to predict. At the time of making the decision the Trustees were faced with unevidenced but indicative information that:
- A real chance of withdrawal by Firoka was likely and imminent
 - That a phased transfer was beneficial to both staff and the trading environment
 - That insolvency of the company was a real possibility
63. In reaching their view as to the validity of a licence development they were being assured by both the, then, General Manager, and the Chair that withdrawal was a real anxiety. In the circumstances known by them at that time, the probability was that they were making a justifiable judgement as to a high degree of likelihood.
64. With hindsight and the benefit of Mr. Holder's submission, that consideration of likelihood must be considered questionable. Rather than being able to rely on two important views (that of the Chair and the General Manager) the actuality appears to be that the view of the General Manager at that time was that a contested withdrawal was a highly unlikely prospect. It appears that the Trustees, with hindsight, could only place emphasis on the presented view and that this, unknown to the Trustees, contradicted the formal officer view and the legal advice (unknown source) that he was aware of as outlined in his briefing note.
65. Similarly, given the knowledge now held, it is clear that the phased transfer did not benefit or settle staff. Indeed turnover increased during this period and the General Manager and Mr. Holder both comment on the need to deal with significant staff complaints.
66. Trading during the year 07/08 does not improve and with some notable exceptions the majority of trade relies on repeat business from previous years.
67. Had APTL continued for the full year and received the same levels of income that Firoka largely inherited, they may well have been solvent at the end of the year. Indeed, it does appear as though the intimation of insolvency presented by Keith Holder is driven not so much by a poor trading situation (which was not marginally less than usual) but by the need to meet dissolution costs if the Firoka transfer had gone through.
68. Overall, therefore, it must be considered that whilst the impact of the possibility of withdrawal was extensive the likelihood was low and, as Mr. Holder states in his submission and briefing note, there is no need for any action and that any claim of withdrawal may simply have been an opportunity to encourage an inducement.
69. This then leaves the issue of just how much is lost. As stated earlier, I have taken the view that the losses to the Trust can be equated to the income received by Firoka less any sums that he had to meet to provide the functions given to him under the licence. I feel that it is important to state that I could find no document whatsoever that indicated that any of the staff at Alexandra Palace or any Trustee or Director of the Trust or Company had any indication provided to them of the financial implications of the licence. All the figures I have

used were available or could easily have been estimated.

Nb: In all cases, the sums quoted should be seen as indicative. The actual sums will be affected by variations either in term of operation or the use of approximations or allocations. However, they will be a useful indication of the sum involved. The possibility for double counting items is considerable. Trustees should not simply add the various sums given in the following analysis. A full table showing my view of the indicative losses is produced at the conclusion of this section.

70. Given the emphasis of this report is to evaluate the extent of the losses and potential liability for them, I have categorised the sums under consideration in the following way.

- Those items where expenditure was retained by the Trust or the company but where the assets or resources were transferred to Firoka as approved in the report to the trustees on the 24th April 2007
- Those items where expenditure took place or income lost as a result of the content of the licence agreement allegedly exceeding the approval given on 24th April 2007
- Profits or losses falling to Firoka as a result of the licence which, had the licence not been created, would have fallen to APTL.

Matters under the agreed licence

71. These first elements only have validity if it can be proven that the Trustees were deliberately or negligently misled as to both the reasons for entering the licence or were misled as to the significance or effect of these items. This is a matter for your legal advisors. I believe the significant factors to take into account are;

- That the report of the 24th April does not give any indication as to term
- That the report does not provide the significant legal information known to the general manager and the Chair relating to the low possibility of challenge
- That no financial information is present in the report which would indicate potential loss
- That the situation relating to insolvency of APTL is not adequately explained
- That no options for alternate consideration were presented
- As stated in the earlier report, no financial assessment by the CFO

72. One of the major criticisms made in the first report was the lack of financial evidence or information presented to Trustees when they made that initial decision. It may be that Keith Holder could justify the limited financial information on the grounds of existing trustee familiarity with the operation of the Trust and its associated company. This would have meant that in agreeing to the secondment of staff they were aware of the sums of money this entailed. Similarly, in agreeing to the novation of contracts they were aware both of the potential loss of revenue and the associated income from trading in catering etc. during the currency of those contracts. This may be so, but is considered unlikely as Councillor Adje in his letter to the Ham and High newspaper makes the point that the majority of the Trustees at the time of the decision were recent appointees.

73. The items in question are:

- The secondment of staff
 - The novation of the existing contracts
74. There is some dispute over the exact nature of the staff that were seconded but the licence is relatively clear that it covers all staff with a few specific exceptions covering agency staff, key management posts and their support staff. The aim of including the staff was to assist in a phased transfer and to provide some element of stability. Clearly, in hindsight, the phased transfer was never completed and there is considerable doubt as to whether the staffing secondment achieved any stability for those staff.
75. Potentially, the argument that could be presented is that the Company would have had to meet this expenditure anyway. This could only be based on the assumption that the staff would have had no alternative function which could have increased income in other areas or reduced expenditure.
76. Although staff were seconded by the Trust they continued to be paid by the APTL throughout the period of the licence. In total, £618,000 was reimbursed by the Trust to the company. In addition, a further sum was paid directly by the Trust for wages and salaries associated with the Ice Rink. This brings the sum to £769,000. This sum represented a payment to Firoka whereby the vast majority of staffing costs during the period of the licence were already paid for, including all overheads, contributions etc. Staffing is the major variable cost at the Palace and its inclusion in the arrangements meant that Firoka were able to staff operational management, day to day operation and contract delivery with virtually no substantial cost to themselves other than agency staff. Other than providing a financial settlement to Firoka in return for continued interest (which ultimately failed) it is very difficult to understand why this was included.
77. The secondment of staff in this way also 'fixed' the staffing budget for APTL and the Trust. Given the warning of poor trading and potential loss, one option available to the Directors and the Trustees would have been to consider reducing staffing costs and staffing levels in response to those trading conditions. The secondment prevented this potential benefit to the financial structure of those organisations.

Novation of contracts

78. Novation of contracts basically means that those contracts which were already contractual to the APTL needed to be transferred to Firoka (Alexandra Palace) Ltd in such a way that any income already deposited would be paid over to Firoka and any other monies subsequently due would again fall to Firoka.
79. The argument that is presented in favour of novation is that the contracts were financially risky and the additional costs at trading or, so called part 3 costs (bus transfers, etc) would push the contract into loss. In interview, Keith holder maintains that a) the contracts may still not have been profitable as the previous sales manager may have entered into loss

making contracts and b) the then company secretary was warning him of insolvency and the potential failure of these contracts to make a profit.

80. On reflection this is disputed. Firstly, the contracts are set from a rate card which should, surely, ensure a degree of profit. The rate card provides additional sums to be added in the case of part 3 services required. If the sales manager was entering into contracts that deliberately incurred a loss then surely there should be evidence of this being a strategic decision by the directors or condemnation of this practice from the General Manager.
81. Secondly, the income from the contract represents pure contribution to largely fixed costs. Essentially, the contracts are for hall hire. The cost of the premises remains whether the hire takes place or not. As those fixed costs remain with the Trust under the licence and the staffing for the contracts is largely already 'awarded' to Firoka it must be assumed that, in large part, the income from those novated contracts represents a further gain to Firoka. Beyond this, the novation of the contract drives not only its own income but generates substantial further trading income in the provision of catering, drinks & beverages, etc. The ratio between hire income and this trading income is roughly <exempt 4>. Accordingly, the novation of the contracts represents a figure of up to £450,000 in total.
82. The major additional cost over and above those already met tends to be agency casual wages. At most, on average, they represent about <exempt 5> and, on the assumption that this higher percentage applies, would result in costs of around £75,000.
83. Again, beyond the benefit of compensating Firoka for retaining interest, I fail to understand why a licence agreeing to these terms was proposed. The view presented in interviews was that it transferred risk. I fail to understand what risk. Surely, it cannot get much worse than having no income, no income from catering trading and having to pay all the staff, other than casuals, which was the position that the Trust achieved by the licence. Indeed, given the nature of Keith Holder's briefing note of 16.4.07 it must be asked whether an objective observer would see the licence, as signed, as representing value for money to the Trustees.

Contravention of the licence agreement

84. The trustees approved the assigning of the APTL licence. It did not agree to a variation on those terms and accordingly any additional costs or lost income must represent a loss to the Trust because the Trust did not sanction it.
85. Within this context must be considered the issue of the Ice Rink. It is a matter of interpretation whether the Ice Rink should be included in this section (contravention) or whether it should be in the first section, (items approved by the Board). The trustees authorised reaching a management agreement on this issue. The first report comments on the ambiguity of this statement and this ambiguity remains. It is my view that as the Ice Rink was singled out by the author of the Report and by the Trustees in their decision, it could be

concluded that they did not anticipate that it would simply be rolled into the licence decision.

The Ice Rink

86. The Ice Rink is a major source of income for the Trust. Celebrity ice skating programmes and associated sporting programmes have considerably increased popularity over the last few years and this has reflected in the takings of the Rink which have risen year on year. The costs of the Ice Rink are, primarily, staffing, utilities and infrastructure.
87. The income derives from three associated sources. Public takings both for entrance onto the rink, catering from the sale of beverages and food, and, private and club hire. The actual income from public takings during the Firoka period is known as the income records have been retained at the Palace. These indicate that the first two elements, public takings and income from catering amount to approximately £550,000 during that period. To this must be added a proportion of the anticipated club hire and private hire which amounts to £240,000 for the year or approximately £160,000 for the period of the Firoka control. It should be noted that this is an allocation not a precise figure and the actual figure may vary slightly from this.
88. Deducted from this sum would be the cost of catering stocks used. This is an unknown but is estimated at a generous £35,000. As stated earlier, infrastructure costs and payroll costs had already been 'awarded' to Firoka.
89. Utility costs are a significant item. The Ice Rink is a major user of such services and so I would conclude that an estimate of £260,000 for the whole site during the Firoka occupation would be appropriate with two thirds being allocated to the Ice Rink or £175,000. This is an estimate.
90. I can find no record either in existing financial records or in any matters relating to Firoka that there was any substantial reliance upon agency provided staff. This situation cannot be guaranteed without access to Firoka's accounts. However the sum is likely to be relatively low.
91. A sum, therefore, of £500,000 was Firoka's benefit from the 'management agreement' that in fact turned out to be a simple benefit in the licence agreement without costs. It is my view that this figure of circa £500,000 represents a loss to the Trust. Again, I fail to understand why this sum was necessary other than to purchase Firoka's support.

The licence fee

92. The second element of contravention is more straightforward in that the variations to the licence are clearly at variance to the formal permission of the Board on the 24th April 2007.

That is: to assign the APTL licence. (It should be noted, however, that Cllr. Egan in his response does recall that the licence was to be provided at a nominal charge)

93. Many of the variations do not have a direct financial consequence but do impact on the facilities and conditions of trade. So many assumptions and allocations would have to take place to put a value on what are relatively small sums that this exercise is not considered to have any validity in the overall scheme of this review. However, the major issue in this category surrounds the licence fee.
94. Under the APTL licence an annual sum of <exempt 6> was quoted as the annual licence fee. At some time after 2002 this was increased to <exempt 6> and this has been the level of paid licence fee since that time.
95. <exempt 7> (In fact, the Trust received no benefit in 2007/08 from the licence once APTL regained control in January 2008. However, this was a considered decision of the Trust and so should not count against any calculation of loss.)
96. In regard to culpability the Trustees should have regard to two issues. Firstly, Keith Holder maintains that the licence was a short term expedient pending the transfer. Had the transfer taken place around the midsummer as expected it is unlikely that APTL would have been able to settle the proportion of the licence fee due given poor trading and the costs associated with dissolution.
97. Secondly, it must now be taken into account that he claims he was operating under instruction and, indeed, even in the first interviews, Cllr. Adje accepts that he was informed over issues such as the licence fee.

Income lost through trading

98. This element provides even more challenges. Had the licence not been in place then Alexandra Palace Trust would have obtained the profits or losses from the novated contracts. This is dealt with under the first element. One of the key justifications for the licence was the poor trading position and the assumption presented that no other contracts would have been forthcoming. This view is predicated on the basis that the licence period would have been short.
99. In fact, over the whole period of the Firoka occupation contracts were serviced which amounted in excess of £1.25m. This would have led to contributions to costs of the Trust. I have approached the calculation of this amount from a number of directions. I have also taken the opportunity to have these figures verified by the finance staff at the London Borough of Haringey. This has led to a third, independent of me, method of calculation and apportionment based upon trends which has broadly confirmed the other figures.

Method one – calculation of potential covenant

100. Had APTL continued to trade during the whole year, it would have covenanted virtually its entire net profit over to the Trust under the gift aid arrangement and, indeed, the APTL did covenant such an amount arising from its trading in April 2007 and from 5th January 2008 to 31st March 2008. The sum covenanted was £713,000 of which £300,000 represented a working capital grant. The remaining sum of £413,000 for four months perhaps indicates the loss of covenant to the Trust that could have been expected during the Firoka occupation. This would extrapolate to a figure of approximately £825,000 (2/3rds of year) although variations in trading patterns would need to be allowed for which may reduce this sum.
101. This figure probably understates the likely loss of contribution. Based as it is on assumed level of costs of trading it will take account of items of expenditure that were, in fact, retained by the trust such as management salaries and other contributions to overheads. It does, however, indicate the potential level of loss.

Method two – attempt at calculating gross profit achieved by Firoka

102. Taken from a different direction, it would appear from figures produced by the Alexandra Palace that Firoka (Alexandra Palace) Ltd entered into and serviced contracts totalling £1,268,000. These events would have led to considerable profit arising from beverages and food sales and these have been estimated by the Alexandra Palace finance staff at £1,000,000. In addition, Firoka would have benefitted from the profit on sales at the Phoenix Bar which, approximates to £230,000. In total, therefore Firoka would have received an income of approximately £2,498,000.
103. From this would have to be deducted the costs of sales associated with running this programme. Agency staff is the major consideration and past experience demonstrates that the relationship between contracts and casual hire is approximately <exempt 8>, On this basis a deduction of £400,000 for such staff would be appropriate.
104. Similarly, Firoka would have engaged additional management and other administrative staff. They may have been involved in marketing costs and other associated matters. Some items, such as equipment hire and servicing part three costs are difficult to establish. This is a complete unknown but an estimate of £500,000 can be allowed for this.
105. The only other area of cost that Firoka would have to meet is any variable overheads arising any infrastructure costs of which the only one identifiable is the utilities payment of, say £75,000. Overall this equates to a loss of contribution on this basis of around £1.623m
106. To avoid double counting, from this must be deducted the loss of income arising from the non payment of the licence fee. This amounts to £162,000
107. This is summarised in the following table:

Item	£000	£000
Income from Contract Hire	1,268	
Likely income from associated catering	1,000	
Profit on sales from Phoenix Bar	230	
Likely expectation of total income		2,498
Less		
Casual Staff	400	
Additional Management costs	500	
Balance of utilities costs	75	
Licence fee	162	
Total expectation of expenditure		1,137
Potential loss		1,361

108. This presents a potential for loss of even allowing for considerable variation in the assumptions made and the costs considered it is difficult to see how the total lost by the Trust could be under £1.4m. In summary therefore I believe the key losses to the Trust can be considered to be:

Heading	Method One £	Method Two £
Loss of Ice rink income	500,000	500,000
Loss of licence income	162,000	162,000
Loss of covenant income by simple approximation	825,000	
Loss of covenant by attempt at calculating gross profit		1,361,000
Total	1,487,000	2,023,000

109. Depending on the method employed and the accuracy of the allocation this would suggest that the loss to the Trust is somewhere between £1,487,000 and £2,023,000. This is the figure that needs to be considered as arising from the decision of the Trustees on the 24th April 2007

110. This is a considerable sum and Trustees would be correct to be concerned about the accuracy of the calculation. As stated earlier, in this exercise I have been fortunate in having the support of finance officers from the London Borough of Haringey and one of those has arrived at the potential loss figure by reconstructing the statutory accounts and comparing these with the known figures from Firoka's activities. His figure is sufficiently similar to mine for me to feel certain that the Trust, can, with some confidence, assume that a loss in the region of £1.5m has been made. Many of the figures used in this calculation are assumptions and allocations. This must reduce the level of certainty that can be put on the actual figures themselves. However, as Trustees will have seen from the calculations, the levels of income assumed are prudent and the levels of expenditure taken into account generous.
111. In conclusion, in attempting to assess whether a loss to the Trust has taken place they will need to give consideration to whether the likelihood of Firoka withdrawing was such that it warranted expenditure in the general region of £1.5m to protect it.

How far was KH responsible for any losses by breach of his duties as an employee before May 2007?

112. This section of the terms of reference attempts to assess whether any responsibility for loss can be attributed to Keith Holder by a failure to act properly as an employee.
113. It is my understanding, to be confirmed by the legal advisors to the Trust, that the general position is that if an employer suffers loss caused by the breach of the implied duty of care by an employee then that employer is entitled to seek damages from that employee, including losses where the employer may be vicariously liable for the actions of the employee. However, normally this does not occur on the basis that the employee concerned is not seen as an effective target for actions for damages by an employer due to their lack of resources.

Any legal action would have to be taken by the Council wearing its "trustee" hat i.e. a decision taken by the APPB instructing its Solicitor to take proceedings for damages.

Keith Holder, whilst an employee of the Council is covered by an indemnity against action. At Para 13 of the conditions of employment, the Council promises not to sue an employee for any neglect error or omission subject to the limits of the indemnity. Para 14 provides an indemnity for acts "subsequently found to be beyond the powers of the employee" but only to the extent of his/her reasonable belief that the act/omission was within his /her powers at the time.

114. Keith Holder was an employee of the Council until 30th April 2007. He was therefore an employee of the Council during the month of April when the licence was envisaged, conceived, approved and developed.

115. The issues under consideration must be:
- Did he act properly in the preparation and consideration of the report to Trustees of the 24th April 2007?
 - Was he exceeding his authority in preparing the licence and giving encouragement to others to sign it?
116. As a chief officer of the Council he is bound by two important matters. The extent of his delegation and the protocols surrounding decision making.
117. Chief Officers at the London Borough of Haringey have general delegated powers to:
- Take management and operational decisions on behalf of the council
 - Secure the effective management of their services including the authorisation of any procedures or contracts within the framework of Financial Regulations and Contract Procedure Rules
 - To implement and develop initiatives within the strategic policy framework and other council plans and policy documents
118. The test as to whether they have worked within these delegated powers is largely a matter of whether they were acting in good faith when so doing.
119. In preparing the licence Keith Holder maintains that he was working within these constraints. It was his view that his actions should be considered within the short term nature of a licence which, he believed at that time, would have, on balance, limited financial effects. He also believed it secured the aims of reducing the threat of insolvency and reducing the threat of withdrawal. He was also working within what he alleges to be the express permission of the majority party. It is difficult to counter this view although the extent to which the handing over of 'profits' was agreed and understood is a matter of dispute.
120. In reporting to the Trust in the way that transpired is a more difficult situation. Trustees could expect that officers produce balanced reports which allow decision makers all salient facts. Clearly, Keith Holder prepared a report in his own name which failed to offer Trustees a realistic view of the extent of the risk that was presented by Firoka's withdrawal. His view, as expressed in his briefing paper included as part of his submission makes it clear that his view was that this risk was very small and various remedies were available to the Trust if withdrawal were proposed. This is not the approach taken in the report.
121. Officers can find themselves in difficult situations when their professional advice runs contrary to a political will whether expressed by a whole group or by a responsible political

individual. However, this does not usually excuse a failure to present a balanced picture and his duty was to all Trustees. It would not have been difficult to prepare a report which presented all facts, including the political risks, and to recommend courses of action that accorded with his advice.

122. The first report makes reference to the tensions that appeared to exist between the Trust and the Local Authority and this may have complicated matters. However, as a Chief Officer of the Council, Keith Holder would have had the opportunity to discuss his quandary with both the Monitoring Officer of the council and the Chief Executive as Head of Paid Service. Both could have advised on an appropriate way forward and conciliated between Keith Holder and the council members involved should this have proven necessary.
123. The second issue of consideration is Keith's accordance with the council protocol on decision making. The London Borough of Haringey has specific agreed protocols for decision making. In fact the last update took place a few weeks before the report was prepared and presented.
124. The protocols on decision making include the following points
 - *No decision shall be taken except upon a written report in accordance with this protocol*
 - *A director, or other senior manager of the authority shall, prepare a written report which shall be the subject of consultation with*
 - *The chief financial officer and the monitoring officer (except to the extent that they agree otherwise in respect of certain clauses of the report.*
 - *other professional chief officers as appropriate*
 - *service directors whose service may be affected by this proposal*

The protocol also states that unless the Head of Members and democratic services agrees any exceptions, the written report shall set out

- *The facts upon which the decision is based*
- *The head of legal services comments on any legal implications or legislative requirements including any HRA issues*
- *Any policy of the authority relating to this issue*
- *any relevant national or regional guidance*
- *the options available to the decision making body*

- *the staffing implications of the issue*
- *the chief financial officers comments on the financial implications*
- *any consultation undertaken, the views of any consultees and a summary of any other representations received*
- *any implications for any other areas of the authorities' activities*
- *the comments of any other professional officer or service director where appropriate*
- *a list of any background papers*

at least five days before the proposed date and time for taking the final decision the committee secretariat shall send a copy of the report or arrange for a copy of the report to be sent to all members of the decision making body.

No exemption was obtained from the Head of Member and Democratic Services and, as was considered extensively in the first report, many of the requirements of the protocol were not met.

125. Additionally, the report was tabled at the meeting. The protocol is clear on what constitutes an urgent item.
126. The protocol states that:

Obviously not all the above can apply when a matter is considered urgent.

If urgency is warranted, the director shall use his best endeavors to consult those persons whom he/she would have been required to consult had the full cabinet decision making process been followed.

The protocol is clear that these procedures should only be used in cases of genuine urgency and should not be abused.

127. The only urgent reason which I am aware of is the need for this to be reported to a meeting on the 15th May. This was fully three weeks after the actual meeting and 10 days or so after the actual signature. Plenty of time existed to call a special meeting and fulfill the requirements of the protocol. Indeed, Cllr. Adje in his submission makes it clear that the deadline of the meeting was not that important.
128. The consequence of this failure was to exclude any external comment about the licence and

to prevent any advice being given on its financial consequences or the need for safeguards.

129. It is for the legal advisors to the Trust to comment on whether these failures, when taken together, constitute more than an inadequate response in a difficult politically charged situation or whether they go beyond the officer acting in good faith.
130. The major issue for this report, however, is the connection between these failures and financial loss. Keith Holder maintains that the licence development was a short term expediency. He claims that the potential for loss that could have arisen from insolvency, withdrawal and poor contracts could be offset against the losses incurred from the gifting of the Ice Rink income and the failure to pay the licence fee. The earlier section on financial loss would counter this to some degree but it should be remembered that the three months when the licence was extant was a traditional time of poor trading and that the whole decision was taken in the context of a transfer in midsummer 2007 when issues such as the dissolution costs would have become relevant.
131. Whilst the losses incurred by the Trustees must, to some extent, have flowed from the failures identified earlier it is difficult to see how Keith Holder can be held civilly liable for them. This is for the following reasons:
- What KH "reasonably believed to be within his powers/authority" is central to the issue of exceeding his authority from the APPB's decision on the licence on 24/04/07. It has already been demonstrated that he believed he was operating within his powers and meeting political aspirations
 - The minute of the APPB on that date/item is very vague. The resolution refers to the General Manager (i.e. DL) being authorised to begin the process of a phased transfer of the Trust business, staff and contracts to Firoka following the approval of the lease and "after taking appropriate legal advice" which seems to have been provided in some shape or form by Berwin Leighton. The resolution contains no limitations on the scale of what was to be transferred or the terms of the licence apart from the two pre-conditions just mentioned. There is some more detail in the "narrative" part of the minute but again this is not cast in specific and definite terms (e.g. "a management agreement for the operation of the ice rink could be concluded"). It has already been proposed that, in governance terms, this does not provide sufficient authority to proceed. However, it similarly, in legal terms, does not constrain him either.
 - As stated earlier, Keith Holder, whilst an employee of the Council is covered by an indemnity against action. At para 13 of the conditions of employment, the Council promises not to sue an employee for any neglect error or omission subject to the limits of the indemnity. Para 14 provides an indemnity for acts "subsequently found to be beyond the powers of the employee" but only to the extent of his/her reasonable belief that the act/omission was within his /her powers at the time. This could be very

problematic in that many of the factors relevant to what was objectively "reasonable" are only known to Keith Holder.

- Another serious complicating factor in the "employee" case is that nothing substantive was actually done before the end of April when Keith Holder ceased to be an employee unless the fact of submitting an urgent report without proper financial/legal comment is taken to be the breach in itself (which would be hard to sustain as an argument). The licence was signed on 4 May 07 but not by Keith Holder. It could be presumed that David Loudfoot effectively signed under Keith Holder's influence and assurance as the consultant but this is outside the scope of the "employment" breach.

How far was KH responsible for any losses by breach of his consultancy agreement with the Council after April 2007

132. Keith Holder was employed as a consultant to the Trust with effect from 1st May 2007 and December 2008. This period covers the events from the signing of the licence until its revocation in January 2008. It includes the period of Firoka occupancy, the originally conceived end date of the licence on 1st August 2007 and the finding of the Judicial Review on 5th October 2007. All these milestones are pertinent to the loss of contribution incurred by the Trust.
133. The consultancy contract can be seen in two parts. The first part relates to the contract itself and sets out various provisions relating to how the consultant will operate during his period of employment. The second describes what the duties and functions of the consultant will be during the period of the contract.
134. The contract required that Keith Holder hold professional indemnity insurance to £1m. It is understood that this has been complied with.
135. Whilst the consultancy document is extensive and requires a range of requirements both to actions and subsequent remedies in case of failure it is relatively short on what happens in circumstances such as those encountered in this situation.
136. The only reference that I can find relates to paragraph 13.1 which states

13.1 The Consultant shall indemnify the Trust against all claims, demands, proceedings, actions, damages, costs, expenses and any other liabilities in respect of, or arising out of, the provision of the Services in relation to the injury to or death of any person, or loss of or damage to any property including property belonging to the Trust or financial loss

Did KH commit a breach (under clause 29.2) of his consultancy agreement with the Council?

137. The consultancy contract with Keith Holder was drawn up in expectation of the transfer to Firoka taking place within a few months. It makes no direct reference to the licence which is surprising given that the licence was presumably drawn up at very much the same time as the consultancy contract. The absence of any licence related duties is confirmed by the fact that it was only when the licence was revoked did Keith Holder have any duties specific to the licence added into his agreement. This was to allow him to assist on a short term basis to facilitate the return transfer.
138. The contract, in its appendices describing the duties etc. does make reference to acting in support of the General Manager but it makes no direct reference as to what these duties are and the extent to which any initiative should be shown over and above the prescribed terms.
139. In his interview, Keith Holder makes it clear that he was not invited to take any action in regard to the licence and, indeed, was progressively excluded from any discussion with regard to strategy or consideration of the relationship with Firoka. However, like in so many aspects of this review, there are contradictory views which do not fully support this position.
140. In my view as an experienced investigator, but subject to legal advice, it is difficult to identify any breaches of the consultancy agreement on the part of Keith Holder.

What action was taken by KH to monitor the financial and other effects of the Firoka licence on the Trust and APTL

141. There is no evidence of any monitoring whatsoever and Keith Holder confirms in his interview that he did not see this as part of his responsibilities. This can be confirmed by reference to his contract agreement.
142. Keith Holder believed this was a duty to be undertaken by the General Manager (who had the responsibility for monitoring specifically highlighted in his contract when agreed by the Trust in April 2007) and by the finance officer, Ken Harrington.

What action was taken by KH to monitor Firoka's compliance with the licence terms?

143. Other than dealing with specific issues arising, including staffing difficulties, Keith Holder only dealt with such matters when asked to do so by the General Manager.

Why was there delay on the part of DL and KH after the judicial review on 05/10/07 in considering the case for termination of the licence and reporting to the Board to secure this decision?

144. I believe it is appropriate to extend the given terms of reference to review issues of termination from the 1st August 2007.
145. The original licence was for a period of three months. It commences legally on the 4th May 2007 with an actual transfer etc. a few days following this date. The licence is said to expire on the 1st August 2007 which is a few days within the three month period.
146. The approach of this date should, in my view, have had two consequences. Firstly, the Trust, not the Company, should, in my opinion, have been invited to consider the licence position in good time to allow any negotiation on a continued licence or to allow the licence to expire. This was particularly important given that at this stage many of the legal protections relating to the master lease referred to in Mr. Holder's April briefing note expired. Equally, this would have been a good time to consider the impact of the licence, whether it was achieving its original objectives, and, most importantly, whether it was a financially successful model. Such a review would have offered the opportunity to reconsider the solvency issue of APTL in the light of continued delay to achieve transfer and to examine the profitability in relative terms of the forthcoming period of trade.
147. Consideration was given by officers to the renewal of the licence and a meeting of the APTL took place at which the licence was mentioned, but in my considered view, these were not the forums necessary to consider a decision of such strategic importance. The meeting of the APTL does consider the issue of the licence but only in the context of action being taken by Firoka to withdraw. It at no stage is given the opportunity to consider the validity or financial impact of the ongoing licence.
148. Secondly, it is assumed that the various indemnities and insurance requirements that would have been needed to satisfy the Trust would have been presented and considered at the commencement of the licence and would have given surety for the period of the licence. I am not aware of any failure on the part of Firoka to have such protections in place beyond this but the issue is that no one at the Alexandra Palace sought to check that they were.
149. The review of the licence or its associated documentation simply did not happen at this time. There is no reference in any Trust report to the licence or its costs between the granting of the licence in April 2007 and the meeting that decided to revoke the licence in December of that year. The licence was allowed to simply run on, without any formal Board consideration, for some four months beyond its legal life.
150. The reason for the failure to carry out such a review can be assumed to stem from the continued uncertainty over the potential for Judicial Review. There is some argument that can be accepted to suggest that revoking the licence at the expiry date may have been an

unnecessary complication. Even was this to be the case, this again raises the question as to why the Trustees were not included in such consideration. However, this reasoning cannot be extended into the period when the outcome of the Judicial Review was known.

151. The result of the Judicial Review was announced on the 5th October 2007. The officers of the Trust correctly, in my opinion, recognised this as a matter of serious consequence and called a special meeting of the Trust to consider options and strategy and this duly took place.
152. However, despite its importance to the process, the financial costs which would have been incurred so far and the prospect of the licence continuing into the most profitable part of the trading year, not one word is said about the licence and no consideration is given to its revocation.
153. Keith Holder in his interview both for the initial investigation and this one is clear that he made representations to David Loudfoot immediately upon his return from Holiday on the 15th October 2007 that the issue of revocation was now a matter of considerable importance. He maintains that his view is predicated upon a future event involving a darts competition. His view was that this was a significant trading event not just in terms of its prestige with the consequent requirement to get things right but its income earning potential over a 12 day period was substantial. He did not put this view in writing.
154. David Loudfoot strongly refutes that any such representations were made. In his email to me of early February 2009 he states:

'I wish to be very clear about this, on his return from Holiday, KH did not give me advice that we should be acting to terminate the licence. Nor do I believe he gave this advice to anyone else at this time.

The emphasis at that point in time was on not allowing the project to die and considering how to meet Kassam's demands...Had Keith been advocating the termination then I would have been discussing this with the chair and board members as the path to be followed.'
155. It is not really until November when the Licence revocation becomes an issue. During October discussions were taking place between Trust officers on how to resolve the situation following the success of the Judicial Review. This culminates in a meeting between officers of the Alexandra Palace Trust and representatives of Firoka on the 25th October. From this meeting emerges the need to reconsider the terms under which Firoka remain in situ and Keith Holder recognises the need to bring this matter to the Borough. In the first week of November a meeting takes place at which Keith Holder is present. This meeting receives a verbal report from Keith Holder that Firoka are seeking compensatory terms resulting from the delays brought about by the Judicial Review. The licence revocation does not appear to have been mentioned. This is perhaps surprising given that Mr Holder had, according to his interview, been making representations as stated above about the need to revoke the licence as soon as possible.

156. It is in the days following this review that the officers of the Borough first become aware of a licence. This is possibly in preparation for a major strategic meeting on the 15th November. At this meeting the claim for compensation is presented in a briefing note <exempt>. Retention of the licence in its present form is seen by Firoka as an essential part of any continued relationship. The raising of the issue of compensatory payments by Mr. Holder both contradicts his statement that he was increasingly being excluded from issues about the arrangements and leaves open the question as to why the need for such compensation was made by him and not the General Manager.
157. Around the day of the meeting a request is made by the Director of Corporate Resources for a copy of the licence. It takes a series of increasingly firm requests and the elapse of nearly two weeks before the licence is produced. During this time a number of important strategic meetings take place to consider how to respond to Firoka and these can only be assumed to be inappropriately informed given the absence of the licence and the detailed knowledge of its contents. This delay in producing a copy of the licence is difficult to understand as Keith Holder makes a copy of the final licence available to the Legal Advisor to the Trust on the 7th November.
158. In his submission (letter to Martin Walklate 22nd October 2008) Keith Holder makes reference to the Chief Executive wanting to make contact with Firoka to establish the strength of their continuing interest. He blames this approach as causing the delay in issuing the notice of termination. This simply does not accord with the facts. The meeting between Firoka and the Chief Executive of the London Borough of Haringey takes place on the 26th November. The council officers did not receive a copy of the licence from Mr. Holder until the 27th November. The Chief Executive would have been required to go ahead with the meeting without knowledge of the content of the licence and I can see no reason why such a meeting could have contributed to any delay.
159. It appears that it is the local authority actions in regard to the exposition of the licence and its importance to determining an appropriate strategy with Firoka that generates the eventual revocation of the licence. It is also at this time that a letter is received from Jacob O'Callaghan, via the District Auditor, questioning the potential breach of trust of the continued licence agreement which leads the Trust legal advisor to seek a better understanding of the licence and to advise the General Manager to work towards rapid revocation. Correspondence once again includes Keith Holder further contradicting his view of exclusion.

Conclusion on culpability

160. I have already expressed the view that the Trust should consider the culture of its organisation and determine why its senior advisors, whether directly employed or through a consultancy or some other route, did not maintain the issue of the licence at the forefront of their thinking and take action whether it was in their job description or not. It is simply not acceptable that a matter which was costing the Trust so much and was so vital to its overall strategy was not considered, monitored or reported formally during the eight months of its tenure. It was known to be 'costing a fortune' in the early summer, however, I believe it is not until the activities of the Director of Corporate Resources at the London Borough of Haringey became involved and seconded staff to the task was the scale of this issue known.
161. It may be exceeding my brief but I personally believe that there is a moral imperative on any senior management team, particularly in the public sector, to take a collective responsibility for such matters and this simply did not happen. The legal advisor to the Trust comments in his interview that Keith Holder provided information to people 'in boxes'. Indicating perhaps a fragmented, titular approach to management existed at the Alexandra Palace. This report and its predecessor, contain many examples where it might be considered that information was inadequately shared or provided. It is for the Trustees to consider whether this constituted individualistic leadership or, perhaps a style that excluded support, comment, criticism and contribution.
162. My focus is predominantly on Keith Holder and my advice to the Trust must be based upon assisting them on considerations of evidence based facts not morality. My advice must be seen as that of a non legal investigator albeit one with experience in this area. The trustees must put first the advice of their own legal advisors when reaching a view as to whether they should initiate any kind of legal claim against Keith Holder.
163. It does appear that Keith Holder created the licence in the context of a complex political situation and, apparently, against his own professional advice. He, more than anyone, was fully aware of the content of the licence and his own experience would have allowed him to be closely familiar with the likely losses to the Trust that it occasioned. Having said this, it is exceptional that at no stage in the licence development, operation and subsequent revocation was any request for a valuation of the cost of the licence made or provided.
164. In all reasonable circumstances it should not be possible for Keith Holder to take a view that he 'changed roles' and that his past activities had no bearing upon his future responsibility and workload. Nor can he claim to have been sidelined during the latter part of the licence process. Indeed Keith Holder is clear that he did make representations relating to revocation of the licence, however, these cannot be evidenced and, if they were made, they were clearly ineffective. As stated earlier, Mr. Loudfoot strongly contradicts this. Keith Holder was clearly fully involved in the decisions to resolve the matters arising from the judicial

review success and in the process originating, determining and agreeing the process for licence revocation.

165. My own view is that whilst his actions may have created conditions that contributed to the loss I can see no reason how he can legitimately be held financially accountable for that loss either under his contract of employment or his contract of consultancy. Even were it to be proven that his original actions were motivated incorrectly, the loss stems far more from the continuation of the licence than it does its original inception. It is the failure to revoke the licence, perhaps as early as August that creates the major loss of contribution. Responsibility at this time becomes shared and uncertain.
166. The strongest failure is the omission from the original report of the clear concerns he voices in his earlier briefing note to Councillor Adje. In so doing he may leave himself open to serious questions about the propriety of his conduct and good faith. However, the contradictory nature of the submissions received and the imprecise nature of much of the record keeping and reporting I would suspect leaves any legal situation weakened although your legal advisors will be able to advise you more properly on this.
167. It may well be that Keith Holder in proposing and continuing the licence believed that this was the only response to what he saw as an inevitable outcome to the political will as understood, or misunderstood, by him. He states in his interview that his only alternative was to do something brave and resign. An unbiased observer may have sympathy with him in this situation but would, no doubt, wonder why other options were not available and whether his actions stem more from wishing to maintain the delivery of the master agreement with only limited regard for the long term consequences of the licence.
168. It is a feature of this investigation and the one leading to the original report that little or no commonality of view about events exists between the significant parties with, in some cases, individuals having clear recollections about positions entirely contradictory to those equally clearly recalled by Keith Holder.
169. This investigation when taken with the first report received in September present, in my opinion, an exhaustive summary of the events surrounding the licence. It is my view that the absence of any real paper trail, allowing proper judgement of events to take place, stems from the poor governance procedures outlined in the first report to Trustees. I believe that remedying this situation should now remain the key focus for the Trustees and that any further allocation of resources to support any further investigation may be counterproductive.

Martin Walklate
March 2009.

Appendices to this report:

Appendix one - submission from Keith Holder:

Letter –	Keith Holder to Martin Walklate 22 nd October 2008 (pages 35-39)
Email –	Keith Holder to Cllr. C Adje – 17 th April 2007 (page 40)
Attachment –	Chairs Briefing note – (pages 41-44)
Email -	Automatically generated response acknowledging receipt (page 45)
Directors Briefing note	exempt
Briefing note -	exempt
Briefing note 2	exempt
Options Paper	exempt
Letter-	Keith Holder to Cllr. Matt Cooke (pages 47-48)

Appendix Two – submission from Cllr. Adje

Covering Reply including answers to questions posed (pages 49-51)
Email Andrew Travers to Ita O'Donovan (page 52)
Article – Ham and High 2.10.08 (page 53)
Council Statement by Councillor Adje (page 54)
Written resolution – APTL (pages 55-56)
Email KH to Cllr Adje – 27.06.07 (page 57)

Appendix three

Covering reply above incorporating questions originally posed. (page 58-62)

Appendix Four

Timeline of key events (page 63)

Mr. M. Walklate
Acting on behalf of Julie Parker
Director of Corporate Resources
Haringey Council

22nd October 2008

Dear Mr. Walklate,

Interview regarding Firoka's licence to operate – Thursday 23rd October 2008

I refer to the interview due to be held on 23rd October 2008 and have prepared this bundle of documents to assist in that process. When your reports were published following the previous round of interviews they contained inaccuracies with some key matters omitted. I am sure you will agree that with the importance being attached to the Licence accuracy is of prime importance.

Further I have concerns about whether this process is truly fair and equitable given that the Lead Member, Resources, Cllr Adje who was driving this process, is the Director of Corporate Resources political point of reference.

I attach to this letter a number of appendices and will deal with each in turn. At the end of this letter I replicate and answer the specific questions raised in the terms of reference attached to the letter dated 8 October.

At appendix 1 is a briefing note prepared for the Chair of the APP Board on 16 April 2007. The briefing note consisting 3 A4 pages is accompanied by a copy of the covering email and a read receipt from the Chair making five pages in total. The originating email was sent at 14.21 hrs Tuesday 17 April with the read receipt being returned at 14.33 hrs, some 12 minutes later. The briefing note sets out the position as it is then known together with my assessment. It is clear from that note that I do not consider it necessary to take any action at that time nor do I recommend any action.

A few days after reading and considering the briefing note the Chair came back making it clear that the arrangements with Firoka were not to be jeopardised. Further he had discussions with other senior politicians who had agreed that Firoka could operate the business on the same basis as if the lease had been completed with the staff being seconded because the TUPE regulations would not apply in these particular circumstances. The benefit arising from the staffing would be the contribution sought as commented on in paragraph 6 of the briefing note.

That there were discussions with other senior politicians on this matter is beyond doubt.

There were a series of meetings in October and November 2007 [which I shall come back to later in this letter] which were attended by the Leader of the local authority together with the following local authority officers; Chief Executive, Director of Corporate Resources, Acting Head of Legal Services, Principal Solicitor and Director of Finance. In attendance from the Trust were the Chair of the Board, Cllr Adje together with the General Manager, the Trust Solicitor and myself as the consultant.

At each of those meetings Cllr. Adje referred to the discussions amongst senior politicians who had collectively agreed the arrangements set out above. [Cllr. Adje was not physically in attendance at one of the meetings but was at the end of a conference call. Nevertheless the same comments were repeated.]

The Leader of the Council accepted that there was such a conversation but further stated that he did not at the time understand that Firoka would be benefiting from the profit as well as taking all the risks.

I now return to the specific matter of the licence. To recap my briefing note sets out the position and I did not consider any actions necessary. The Chair had an opposite view which was cleared with other senior politicians and it was made clear that set the framework for moving forward. The Chair said that they were of the robust view that the 18 years of hard work to get the Trust to this stage was not to be sacrificed on *his or George's watch*. I was to produce a short paper for the Board the following Tuesday which would have to be tabled and which as Chair he would agree to accept. That this happened and was accepted by the Board is common knowledge and I have not included a copy.

My direct employment ended on 30 April <exempt 9> The Company Secretary signed the licence on behalf of APTL. I assume that both employees have confirmed the instructions received from the Chair of the Board. The licence was a temporary arrangement to last for 3 months. It was toward the end of the three months that an application for a judicial review of the Trust Commission Order was made. My understanding is that there was no review of the licence arrangement at this time because APTL's trading position had not improved.

Through an ad hoc conversation with the Company Secretary it became clear the APTL's financial position was becoming intolerable and the company was getting close to insolvency. I urged the Company Secretary to convene a special meeting of the directors to advise them of this critical position. This meeting was held on 1 August 2007 but because the Company Secretary was not versed in the political arena I had to write the briefing note based on his assessment of the position. A copy is provided at appendix 2. As I understand the position no

specific action arose out of this meeting despite the directors being advised that they would need financial support to maintain APTL's liquidity prior to a member's voluntary liquidation.

A "rolled up" judicial review [application and hearing on the same day] was held on 5 October 2007. The Trust Commission Order was quashed on the narrow issue of the inappropriate public consultation process by the Commission. The APP Board met on 10 October 2007 and unanimously resolved to approach the Trust Commission for a new Order recognising that the Commission would need to re-run its consultative process.

I was in Canada in late September only returning to work on 15 October 2007. I was not therefore able to attend the judicial review hearing or the subsequent board meeting or provide any advice in respect of the lease. The licence was an issue under the direct management of the General Manager.

Earlier mention was made of the internal meetings held to consider the options available to the Trust following the quashing of the Order. On the instructions of the General Manager I produced a briefing paper for a meeting on 15 November 2007 which sets out those options. A copy is provided at appendix 3. The figures contained within the briefing paper were produced by the General Manager with the assistance of the Company Secretary [whose role also covered the Trust].

A further meeting was held on 21 November to which the briefing note at appendix 4 was submitted. Alongside my briefing note was a joint one from the local authority's Acting Head of Legal Services and Director of Finance which set out similar positions. A copy is included at appendix 5.

At no point during these meetings did anyone raise the apparent dichotomy between a licence which allowed termination on 5 days notice when it was written and advice which changed that term to 28 days when the notice was to be given.

At some point during this series of meetings the Chief Executive wanted to make contact with Firoka's principal to try to establish the strength if any of continuing interest in pursuing the lease. However one of the consequences of this approach was to delay the actual notice of termination of the licence thereby preventing APTL capitalising on the delivery of two major concerts and the twelve day World Darts Tournament.

Questions raised in terms of reference

- What was KH's precise role in securing that the licence was signed on 04/05/07?

- Was the signature of the licence outside the authority given by the Board on 24/4/07?
- What losses were caused to the Trust by entering into the licence with Firoka?
- How far was KH responsible for any losses by breach of his duties as an employee before May 2007?

These matters are essentially covered by the briefing note at appendix 1 and the clarification given at the beginning of this letter. My advice that no action was necessary at that stage was clearly set out for the Chair of the Board.

- How far was KH responsible for any losses by breach of the consultancy agreement ...after April 2007?
- Did KH commit a fundamental breach (under cl. 29.2) of his consultancy agreement ?
- What action was taken by KH to monitor the financial and other effects of the Firoka licence on the Trust and APTL?
- What action was taken by KH to monitor Firoka's compliance with the licence terms?
- Why was there a delay on the part of KH after the judicial review on 5/10/07 in considering the case for terminating the licence and reporting to the board to secure this decision?

There appears to be a complete lack of understanding of the consultancy role. This role and subsequent contract came about because the Trust Commission were keen to ensure that the Trustees put in place arrangements to monitor the lease terms.

I understand it was the unanimous view of the Board that I was the person best placed to monitor the lease and look after the trustee interests. The licence was a temporary matter put in place pending the completion of the lease. The consultancy arrangement has no bearing on the licence or vice versa.

Attached at appendix 6 is a letter to Cllr. Cooke, the then Chair of the Board clarifying my contractual position.

There is an additional point to make in respect of Firoka. The senior managers of the Trust and APTL were in contact with Firoka's Finance Director over many months earlier this year. Where there were differences of opinion over the respective positions the written response contained comments such as Charles Adje agreed the detail and will confirm our view.

Finally I would advise that I will shortly be preparing a number of copies of this bundle for distribution to those mentioned within this correspondence so that there is clarity over what I have said.

Yours faithfully,

K.E. Holder

Appendix 1
e-mail

Page

APP 1
PAG

Main Identity

From: "Keith Holder" <keith.holder@appct.org>
To: "Adje, Charles" <Charles.Adje@haringey.gov.uk>
Sent: 17 April 2007 14:21
Attach: Chairs Briefing Note - April 2007.doc
Subject: Chairs Briefing Note - April 2007.doc

Charles,

The briefing note requested is attached.

Keith

1. This briefing note is compiled following:

- discussion between the Chair, General Manager and Kassam on Wednesday, 11th April;
- subsequent telephone conversations between the Chair and Kassam over the weekend of 13/14th April;
- a discussion between the Chair and Ormrod on Monday 16th April;
- subsequent receipt of the draft Order [version 5] from the Trust Commission and their covering letter late on Monday 16th April;
- further conversations with this Trust's legal advisors on the development project on Tuesday 17th April.

2. Can Kassam rescind the agreement ?

2.1 Although Kassam appears to be considerably less enthusiastic about the project and has stated that he wishes to “get out” our advisers are adamant that the way the contracts are drawn there is no easy escape from the conditions contained within the lease, project agreement and master agreement. Both publicly and politically there would be significant and probably uncontrollable fallout if the arrangement were to fall at this late stage.

2.2 It is probably true to say that the delays in process, generated in the main by the Trust Commission, have been extremely unhelpful they do not in themselves provide grounds for Kassam to walk away. The trustees have constantly and consistently used their best endeavours to maintain pressure on the Commission and it is accepted by all parties that the trustees do not control them.

2.3 Kassam's claim that the trustees have done nothing to maintain/develop the existing business in preparation for transfer is without foundation although Kassam has instructed his Solicitor to establish whether there is any provable and fundamental breach here that provides a sound argument.

2.4 Firoka's selected individual has been on site since November 2006 supposedly ensuring that Firoka's interests in the business is secured. However it emerged late yesterday, 16th April, that Kassam had not advised his solicitors of the appointment and when advised by this Trust's solicitors it was clear this was a new dimension that would have to be considered but that prima facie it at least neutralised any argument he may otherwise have had in this respect.

2.5 Kassam's solicitor has also raised the question of the review of the listing of the building by English Heritage and the impact on the lease if the grading is increased. Our solicitors, in

informal discussion with his, have advised that this is not in the contract, is not fundamental, is not a breach of contract and is not something the trustees can control. Review of listings take place regularly and this one could have taken place after, rather than before the arrangements become unconditional.

2.6 It is clear from our advice that the circumstances in which Kassam can rescind are limited. In the main they arise from:

- i] no Order being granted;
- ii] unacceptable conditions being imposed in the Order;
- iii] an Order delayed beyond the dates set out in the master agreement;
- iv] an Order being overturned at judicial review.

2.7 Our advisers are robust in their view that Kassam could not just walk away. Whilst we may have sympathy with the position he finds himself in the trustee body set out its objectives and these have [almost] been achieved. If he decides to walk the reality is that this Trust could challenge for non-performance. It may not be desirable but may become necessary.

3. The current progress on the Order

3.1 The draft Order [Version 5] was sent to us late yesterday. This fact combined with the previous statements from the Commission do not give substance to an argument that an Order will not be granted.

3.2 The draft Order [Version 5] does not seek to impose additional conditions on Kassam or seek to amend the lease, project agreement or other documentation forming the contract. It does replicate the trustees' obligation to consult the Advisory Committee but stops short of placing any responsibility in this regard on Kassam.

3.3 The meeting of the Commissioners will now be set up during week beginning 30th April because of problems matching diaries. This further delay is immensely irritating but it does not undermine the principles being adopted nor give us any additional concerns over timing.

3.4 It is accepted by everyone in this process that a judicial review is a possibility. However an applicant will have to seek leave from the Court initially and a prima facie case that the Trust Commission decision to grant an Order was perverse would have to be established. The Court would then need to consider the prospect of success and instruct the appellant to deposit costs prior to agreeing a hearing. It is everyone's view that the prospect of an application is remote and of success even more so.

3.5 The Order is conditional on Kassam agreeing to security his solicitors had indicated would be exercised for CUFOs. Our advisers think it unlikely that he could now argue that was conditional on something else when the *something else* wasn't spelt out. The

Commission want this Trust to amend the CUFOS lease which is the correct way of doing things but we cannot easily without Kassam's agreement. This point has gone back to Kassam's advisers and a response awaited.

3.6 There are some minor drafting changes that Iain Harris and Laurie Heller are discussing but these are around how to describe the guarantor provisions in the draft Order and are not substantial points.

4. What else from the Commission ?

4.1 Most of the other comments made by the Commission are around definitions and drafting. The only substantive matter contained in the Commission's covering letter to the Order is a request for a copy of the plan of the area to be demised. There will need to be a specific and accurate plan attached to the lease for Land Registry purposes. I have instructed that this should be prepared and it can then be used for the Trust Commission purposes also.

5. Is there an Option B for the Trust ?

5.1 The objective since 1990 when the overspend was originally identified the Council is both its role as local authority and trustee has adopted an "holistic leasing" strategy. In this context there has never been any other option and no authority from the board to incur fees in exploring an alternative. Therefore nothing exists.

6. Is there an Option B for Kassam ?

6.1 The start point here was his request to "get out" last Wednesday. Given the foregoing I cannot identify any methodology which would allow that to happen.

6.2 Kassam's Option B appears at odds with his starting position. If he is forced to engage then he claims to want to *accelerate* the process and take the commercial risk associated with this approach including the outcome of any judicial review. I have already provided comment on the likelihood in paragraph 3.4.

6.3 If Kassam were to *accelerate* the process he claims this would save the Trust some £250,000 over a three month period and he has requested we use that funding to support him and reflect the additional risks he would assume over the interim period.

6.4 I am struggling with the concept. Our advisers are clear in their view of the current situation and have repeatedly stated that Kassam has no grounds for terminating the arrangement. Against this background there can be no basis for considering any inducement at this point in time. In addition consideration needs to be given to the argument that the whole "I want out" scenario may simply be a mechanism from which to launch the

inducement argument and gain a benefit not otherwise available. Caution should be exercised at this stage and there do not appear to be any grounds for a rushed decision.

6.5 Any public decision to financially assist Kassam would undoubtedly generate fierce public opposition. It is also unlikely that such a stance could be politically justified. If there were a desire to provide some assistance it would, in my view, have to be restricted to the non-recovery of some legitimate expense incurred prior to transfer. The danger of course is that any non-recovery may be exposed by a liquidator reviewing transfers between the Trust and APTL and become public knowledge through that route. Support of this nature is fraught with danger

7. Summary

7.1 The foregoing sets out the principle position as it is currently known. The advice reflected here gives little room for changing stance or making judgement on what may be necessary further in the process.

7.2 These comments are written without any knowledge of the content of the telephone discussions over the weekend and the subsequent meeting with Ormrod. However the argument that “one of his people is working here and looking after his interests” has clearly rattled his solicitors. On this basis alone it would be wrong to take precipitate action on terminating his contract given that an Order is so close to delivery.

7.3 Whilst there have been irritating delays and frustrating questions to be dealt with throughout, the process is on track to deliver albeit not in a timeframe of our choosing. Nevertheless it does not appear that we have to take any action at this point other than to keep a watchful eye on progress.

16th April 2007

Appendix 1
email

Page

APP
F

Main Identity

From: "Cllr Adje Charles" <Charles.Adje@haringey.gov.uk>
To: "Keith Holder" <keith.holder@appct.org>
Sent: 17 April 2007 14:33
Attach: ATT00465.txt
Subject: Read: Chairs Briefing Note - April 2007.doc

Your message

To: Cllr Adje Charles
Subject: Chairs Briefing Note - April 2007.doc
Sent: Tue, 17 Apr 2007 14:21:16 +0100

was read on Tue, 17 Apr 2007 14:33:47 +0100

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify the system administrator at Haringey Council. Although this e-mail and any attachments are believed to be free of any virus, or other defect which might affect any computer or system into which they are received and opened, it is the responsibility of the recipient to ensure that they are virus free and no responsibility is accepted for any loss or damage from receipt or use thereof.

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The following three documents are considered under the exempt element of this report.

Directors briefing Note	exempt
Briefing note -	exempt
Briefing note 2	exempt
Options Paper	exempt

Cllr. Matt Cooke
Chair, APP Board
Members Room
River Park House
Wood Green
London
N22

29th November 2007

Dear Matt,

Contract for Service

At the end of the meeting held yesterday afternoon I made some comments to you about the steps necessary to re-activate APTL in light of the earlier discussion.

However I am not sure that there is a current and clear understanding of my contractual position. I am not employed by either the Trust or APTL.

The Trust's general manager is David Loudfoot. It is David to whom I report under my contract for service. That contract is very specific and was drawn around the requirement to ensure that the Trust's interests were protected under the grant of the lease to Firoka.

Alexandra Palace Trading Ltd. is also not part of my contractual responsibilities. Nothing in the list of key deliverables is related to the company. I had raised with you the problem of key decision-making in the absence of David Loudfoot and also that of APTL prior to David Loudfoot commencing his annual leave but I think with everything else that is occurring it is likely the matter was overlooked.

The most senior individual within APTL is the company secretary, Ken Harrington. Mr. Harrington retires in January 2008. However he is the only accountant within the company. One temporary accountant suffered a heart attack in August and is unlikely to return and the accounts assistants have resigned with one already gone and the other leaving tomorrow.

Whilst Mr. Harrington can carry out the function of company secretary he does not have the knowledge to manage APTL. Even if he did his impending retirement does not allow the company to rely on his continued presence.

Part of the meeting yesterday appeared to make assumptions about what I could deliver in light of my previous position and knowledge gained. However there is no basis or framework for me to undertake the role on behalf of either the Trust or APTL. I carry professional

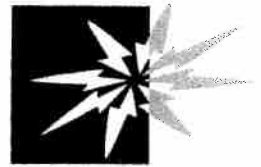
indemnity insurance but that has been arranged on the basis of the work set out in my contract for service and will not extend to the activities now being discussed.

Given some of the comments, and tenor of those comments, in the earlier part of yesterday's meeting I will be necessary at very least to agree a written variation to my contract for service prior to publishing or agreeing to have published, any reports to which I have made a contribution. It is also necessary to note that the contract is not full time.

I regret having to write in such terms but I think it important to have set out the position clearly.

Yours faithfully,

K.E.Holder



*Appendix Two
Submission from Cllr Adje*

Your ref:

Date: 17th November 2008

Our ref:

Direct dial: 020 8489 2687

Email: charles.adje@haringey.gov.uk

Dear Mr Walklate and Ms Parker

Thank you for your correspondence and enclosures. It is not clear from the points in your correspondence or from the minutes of the Board what the objective of this further investigation is. Is it to ascertain why Keith Holder and or David Loudfoot failed to refer back to the Board or myself as the then Chair before the changes were applied to the licence and without seeking legal opinion and further approval? If that is the case, then I understand, as this is the crux of the matter as far as I am concerned. I would however like this point clarified.

Whilst I do not have much to add to what I have already said in my letter to the Ham & High and my statement at the Council meeting, I will endeavour to answer some of the points raised in your correspondence as far as I can remember and attach both documents and a copy of an email from Andrew Travers dated 12th February 2007. I hope you find its contents useful especially in relation to the points made by both Mr Tarpey, the observer at meetings for so many years, and Nigel Willmott, former Chair of the Board in relation to Keith Holder's knowledge, experience and role as recorded in the minutes.

Keith Holder was held in high regard and everyone at the time felt that the deal would collapse without his expert knowledge and experience of having run the place for so many years – he had also been driving the development and transfer process. It is against this backdrop that the Board at the time resolved not to terminate Keith Holder's services and requested that he should be retained as a consultant and to train and provide support to David Loudfoot.

Now I turn to your questions;

1. I believe this meeting did take place and notes were as usual taken by Keith Holder. On this occasion, I believe it was to discuss secondment of staff and Kassam's proposals for running the Palace. I can confirm KH took notes of all our meetings but did not produce them. The outcome was that KH and Kassam would continue and finalise matters.

2. I seldom received calls from Kassam. Keith would normally phone me if there were any issues. Kassam did phone to confirm the discussion he had with KH about the Licence. We concluded that I would check with KH.

3. I can confirm that I met and had discussions with Sean Ormrod on Monday 16th April as well as with the marketing staff who filled me into how they were being treated and had been for years. I had had several discussions with Mr Ormrod, KH and David Loudfoot. I was aware that there were issues between them regarding management styles, operational issues and how staff were treated by KH and DL. I did meet with the staff as stated who felt that they had never been to the third floor of the building unless asked by KH and DL - they had never had staff meetings and ~~they were grateful for my visit which~~ They were grateful for my visit which was the first time ever a member or Chair of the Board had met with them.

4. I do not recall being involved in any discussions with the Charity's legal advisors on 17th April regarding the licence. (Exempt II)

5. I received the note in question.

6. I presume so.

7. I noted the contents of the note and took no further action bearing in mind that KH and Kassam had discussed matters prior.

8. I confirm that I did not receive any particular briefing/s nor discussions regarding any of the proposed changes to the licence and profit or loss implications.

9. I did not contact Keith Holder to 'make it clear' to him as stated. Keith later informed me that the licence could be novated along with the staff on secondment for a limited period given APTL's financial position. See his appendix 2 dated 1 August 2007. (I attach a copy of the Written Resolution of the Directors). I wondered at the time why he felt it could now be done. He asked when it should be done by and whether it should be done prior to the Group AGM and I remember saying 'if it can be achieved'. He did not however explain why he changed his mind though.

10. Yes, Councillor Meehan as Leader of the Council. I checked everything out with him before actioning and prior to informing my Labour colleagues as our objective was to transfer the risks. I believe the Chief Executive was going to telephone Keith following my discussion with Councillor Meehan.

11. No, I did not as KH was now progressing matters contrary to his note.

12. This is correct.

13. This is also correct. As stated in 8 above, there were no discussions or briefings about profit share or loss percentages.

14. Certainly not. KH advised that it would not be prudent to prepare a full report and that what was needed to progress the secondment and licence was to have a brief outline to the meeting for approval as he felt that the information (within a report) could be leaked as has often been the case.

15. No, I did not. In fact, following the Board meeting on 24th April, I cannot recall having any further discussions with officers at the Palace regarding any change/s to the licence or progress. (I was not aware of who signed it or when it was signed as I

thought KH was dealing with all matters).

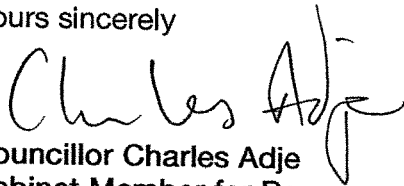
16. I cannot comment as I was not present at the signing.

17. I confirm that I did not have any detailed discussions with Kassam about the Licence nor did I have any involvement in the detail or composition of the Licence. If I did, I would certainly know the details and confirm same but I did not and still do not. I have not seen the licence and do not know what it looked like before or now. Everyone deferred to Keith as the font of all knowledge as far as these matters are concerned. Keith led on all the negotiations. On the issue of the comments by Firoka, I would ask why Keith did not check / corroborate this with me. This is the first I have heard of this statement.

I cannot fathom why Keith would suggest that he was instructed or pressurised to complete the Licence by 4th or 5th May when as you both know deadlines can and are often missed. If Keith was having difficulties with Kassam why did he not report back or call me as he often had done? Whenever there had been issues or problems with Kassam, Keith would phone me or ask for a meeting. I would then speak to Cllr Meehan depending on the issue at hand. I received no such calls during the Licence negotiations from either Keith or David Loudfoot.

I would also like to know why, if legal advice or Counsel opinion were sought they were not provided to me or the Board prior to completion. It was Keith who called and advised me to continue as the Chair of APTL after my Group's AGM despite my concern about possible potential conflict. He said that there was no conflict and that it was only for a short period as the transfer to Firoka would soon be complete and the company wound up. He felt it was too much trouble to go through the process of completing forms to change directors and signatures. Just so that you know, Keith did thank me for letting him run the business without any interference. He said he was very grateful and appreciated it. I am very disheartened and disappointed at his current stance. I feel rather let down.

Yours sincerely



Councillor Charles Adje
Cabinet Member for Resources

Appendix 2.

Email Andrew Travers
to Ita O'Donovan**Cllr Adje Charles**

From: Travers Andrew
Sent: 12 February 2007 09:42
To: O'Donovan Ita; Young Stuart
Cc: Dauncey Tim; Almeroth Gerald; Cllr Meehan George; Cllr Adje Charles; Fiore Davina
Subject: Alexandra Palace

Ita/Stuart

I met with Cllr Adje to discuss management arrangements post transfer to Firoka.

We agreed that:

- it would not be sensible for Keith Holder to have a continuing role with both Firoka and the Council as trustee;
- with hindsight, it might have been better for Keith to have a role with Firoka and for the Council to make alternative arrangements for managing trust affairs; but
- given where we are with the Charity Commission and existing board decisions, it is too risky to the transfer to Firoka to change arrangements in the short-term and that Keith should continue with the trust for a limited period (6-12 months) post transfer.

We also discussed the need to have effective short-term arrangements in place (both to monitor Firoka's performance and to ensure as far as possible that Firoka's development proposals are successful), and to ensure sound longer-term management arrangements and support to the board.

We concluded that Cllr Adje would inform Firoka and Keith that we would not support Keith being employed by Firoka at this time. We also concluded that it was sensible for the board to go ahead with the proposed appointment of RLF to support the monitoring of adherence to lease terms.

Subject to your approval Ita, I suggested that Tim Dauncey should oversee the establishment of short-term management arrangements and Keith's role within them, and also to propose longer-term arrangements post Keith's final departure. This would need to cover:

- involvement of property services as client to RLF
- involvement of parks as client to the parks contractor
- the retention of the external legal adviser to the board
- involvement of strategic sites and regeneration
- finance and support services
- the roles of other retained trust staff.

Andrew

52

Board's inaction led to Firoka walking away from AP deal

Ham & Hig
Thursday 2nd October 2006

READ with incredulity your comments, on the Walklate Ally Pally report (*Call for heads to roll after shocking Ally Pally report*, H&H Broadway September 25). To state that the whole deal was done behind closed doors is absurd.

Board members were informed of the financial situation and of contracts being terminated or dwindling. Firoka was becoming impatient and was concerned about this, the Unions were concerned about the way their members were being dealt with regarding TUPE negotiations, and staff were also leaving to take up jobs elsewhere due to the continuing uncertainty.

Firoka had the resources to move things forward and the potential to channel business to the Palace.

The Alexandra Palace Trading Company was also being wound up as it was in deficit, and the board ran the risk of trading with an insolvent company (as reported by officers at the time). The two independent non-executive directors had already stood down and liquidators were on standby to wind down the company.

You will be aware that the company has its own accountants and auditors. Council officers were aware of this and I believe provisions had been made to this effect.

In order to ensure the future of the assets and that staff were provided with some certainty for the future and to further lock Firoka in, the Board of Trustees and of the Trading Company decided to second the staff and grant a licence to Firoka Alexandra Palace Limited for a limited period.

At no time did any board member query this decision or state that they did not understand what was being proposed. The decision to transfer was unanimous. The Leader of the Council and the Chief Executive were fully conversant with the process.

I am certain that the interim licence would not have been granted if board members had been told that the Judicial Review would go against the Charity Commission or the board. It is however, regrettable that officers did not seek legal or counsel's opinion to finalise the licence.



Safeguarding Alkexandra Palace's future and lifting the burden on the ratepayer was always my aim, says Charles Adje (Inset)

Counsel's opinion was sought by officers regarding the Judicial Review and the chair of the Board of Trustees, the council leader and the chief executive were fully conversant with the opinion.

The Walklate report infers that board members were not competent and casts aspersions on their ability, their hard work and good intentions. The report failed to reflect the fact that apart from one board member who had been on the board for some time, the other members, including myself at the time, were new appointees with no previous involvement with the board.

We needed to complete the transfer process and there was no reserve bidder or plan 'B'. We were faced with a fait accompli. We therefore had to make do with what we inherited.

I should also like to state that I have had no dealings in the affairs of the Palace since I left as Chair. I do not know how Mr Walklate's service came to be commissioned, nor was I consulted in terms of his remit.

The board's aim at all times was to transfer the risks and secure the future of the assets and the staff, although this strategy had its critics.

The Walklate report and your lead comment belittle the £50m investment by Firoka, a project which commenced in 2004 and which I believe to have been the second attempt to transfer the risks and secure the future of the assets.

It should be noted that the transfer did not collapse as a result of the licence issue, as the licence was issued for a limited

period. The licence should have been terminated immediately after the outcome of the Judicial Review as the need for it to continue no longer existed.

It should also be borne in mind that Firoka 'walked' as a result of the inaction on the part of the board to progress matters, (according to their press statement) which you also published, and not as a result of issue of the licence.

We had never denied that there had been longstanding governance problems with the Palace. The board was faced with a dilemma: whether to spend its energy on the issue of governance as inherited (which is a perennial issue) or to focus on the transfer (which would have resolved the governance issue as the Trading Company would have been liquidated following the transfer).

The report and your comments seem to infer that this all happened in my term as chair, which is not the case.

My aim and that of my Labour colleagues has always been and remains the same, to safeguard the future of the Palace and lift the burden from the Haringey taxpayer.

Finally, it should be noted that I asked for the whole report to be made public rather than parts of it, as I have nothing to hide.

As ever, I will continue to work hard for the benefit and interest of the people of our borough, not just for the few.

CLLR CHARLES ADJE
Labour Member for
White Hart Lane Ward
Haringey Council

Council Statement by Councillor Adje

Councillor Adje - Council Statement

As Chair of the Alexandra Palace and Park Board of Trustees at the time the licence to trade was discussed and put in place with Firoka in May 2007.

It must be appreciated that officers and members, including myself were operating under great pressure to ensure the success of the leasing arrangement with Firoka, for the benefit of the Trust and ultimately for Council taxpayers, bearing in mind that Firoka was the only and main partner with no plan B which the board inherited

The Board voted unanimously for the transitional arrangement for a limited period which ultimately would have been superseded by the lease and also as a way of helping to maintain the commitment of Firoka to the process which was fundamentally in the of the Trust and the people of Haringey as Firoka Alexandra Place limited was going to invest just over £50m in the restoration of the Palace.

Furthermore, it was based on the advice by officers that APTL was in deficit and we ran the risk of trading with an insolvent company which is unlawful.

It was my understanding and that of the Board's that the licence with Firoka was to be granted on the same terms as those applying to the licence with APTL.

It is regrettable that changes to the terms of the licence were not brought to my attention or to that of fellow Board members when it was finalised.

Appendix 2
Written Resolution
APTL

ALEXANDRA PALACE TRADING LIMITED

To: Charles Adjé, Chair; Pat Egan, Director; Bob Hare, Director; Sheila Peacock, Director; c.c. Ken Harrington, Company Secretary

Subject: Written Resolution of the Directors

I write to formally advise that the board of trustees of the charity met on Tuesday 24th April 2007. As sole shareholder the charity resolved that the directors of Alexandra Palace Trading Ltd. should be advised that in light of the Charity Commission decision in principle to grant an Order* allowing disposal of Alexandra Palace and the immediate surrounding area to Firoka (Alexandra Palace) Ltd. the licence granted to APTL to use the asset is being rescinded. Further that Firoka (Alexandra Palace) Ltd. be granted an option of early occupation to facilitate a phased transfer of staff enabling Firoka to develop the business in advance of completion of the formal lease.

The directors of APTL can no longer operate and comply with the memorandum and articles of association which constrains the activities of the company to generating business within Alexandra Palace. A formal resolution to cease trading is therefore required.

Further and flowing from the effect of ceasing to trade all creditors must be paid and all debts converted into cash on the balance sheet. The next step will be to appoint liquidators from Deloitte & Touche to ensure that the members voluntary liquidation previously reported to the directors can proceed.

The directors will recall that the fee structure previously reported was ~~£12,000~~ with additional costs for advertising, etc. being around ~~£1,000~~. These figures are VAT exclusive. These sums have been discussed with the Acting Director of Finance at the local authority because it may be necessary for some financial support in this respect. The Acting Director of Finance has confirmed his view that it represents value for money and provides a higher degree of comfort to the directors than any other route to closure.

To give effect to these matters would require a meeting of the directors. Alternatively the resolutions can be agreed by a process known as written resolutions. In the latter case the remaining directors all receive copies of the resolutions and sign against each one indicating the consent to it.

The resolutions are on page two of this document. I would ask that each director prints off page two, signs to indicate consent against each of the resolutions, inserts the date at the bottom of the page and returns the copies to me by first class post as soon as possible but in any event no later than Friday 4th May 2007.

Please note that effect cannot be given to the resolutions in the absence of signatures.

I will advise of the result immediately thereafter.

Regards,

K.E.Holder

* The Charity Commission subsequently confirmed on 30th April following a further meeting of the Commissioners on Friday 27th April that all matters had been concluded and that they were prepared to formally grant and seal the Order.

Alexandra Palace Trading Ltd.

My consent to the resolutions laid out on page 1 of this document is indicated by my signature as follows :

Resolution 1 – That all staff be seconded to Firoka (Alexandra Palace) Ltd.; that all commercial contracts be novated in Firoka's favour; that all contracts for supply of goods be novated in Firoka's favour; any other contracts not generally or specifically covered above also be novated;

Signed :

Resolution 2 – That Alexandra Palace Trading Limited ceases to trade on the date that Firoka (Alexandra Palace) Ltd. assumes control of the business;

Signed:

Resolution 3 – That the Company Secretary be instructed to pay all creditors and vigorously convert all debts;

Signed:

Resolution 4 – That Deloitte & Touche be appointed as liquidators and on appointment the remaining directors agree to resign.

Signed:

Date of Signatures

Email KH to Cllr Adje – 27.06.07

From: Keith Holder [keith.holder@appct.org]

Sent: 27 June 2007 10:24

To: Cllr Adje Charles

Subject: Alex Palace

Importance: High

Follow Up Flag: Follow up

Flag Status: Red

Charles,

Could you give me a call on my land line - 020 83654325. I am in the office most of today [Wednesday] and tomorrow.

Regards,

Keith Holder

Consultant Development Manager

Edwin Holder Associates

-

Appendix three

Covering reply above incorporating questions originally posed.

Txt document arising from scanning Cllr. Adje's document and inserting original questions.

Dear Mr Walklate and Ms Parker

Thank you for your correspondence and enclosures. It is not clear from the points in your correspondence or from the minutes of the Board what the objective of this further investigation is. Is it to ascertain why Keith Holder and or David Loudfoot failed to refer back to the Board or myself as the then Chair before the changes were applied to the licence and without seeking legal opinion and further approval? If that is the case, then I understand, as this is the crux of the matter as far as I am concerned. I would however like this point clarified.

Whilst I do not have much to add to what I have already said in my letter to the Ham & High and my statement at the Council meeting, I will endeavour to answer some of the points raised in your correspondence as far as I can remember and attach both documents and a copy of an email from Andrew Travers dated 12th February 2007. I hope you find its contents useful especially in relation to the points made by both Mr Tarpey, the observer at meetings for so many years, and Nigel Willmott, former Chair of the Board in relation to Keith Holder's knowledge, experience and role as recorded in the minutes.

Keith Holder was held in high regard and everyone at the time felt that the deal would collapse without his expert knowledge and experience of having run the place for so many years -he had also been driving the development and transfer process. It is against this backdrop that the Board at the time resolved not to terminate Keith Holder's services and requested that he should be retained as a consultant and to train and provide support to David Loudfoot.

Now I turn to your questions;

1. Can you confirm that you attended a meeting between 'Kassam' the General Manager and yourself on Wednesday 11th April 2007?
 - What was the purpose of that meeting?
 - Were any notes of the meeting retained?
 - What decisions were reached?
 - What would you summarise as the outcome of that meeting?

I believe this meeting did take place and notes were as usual taken by Keith Holder. On this occasion, I believe it was to discuss secondment of staff and Kassam's proposals for running the Palace. I can confirm KH took notes of all our meetings but did not produce them. The outcome was that KH and Kassam would continue and finalise matters.

2. Can you confirm that you had subsequent telephone discussions with 'Kassam' over the weekend of the 13/14th April 2007?
 - Who initiated these phone calls and what was there purpose?
 - What decisions, if any, were reached?
 - What would you summarise as the outcome of those telephone discussions.

I seldom received calls from Kassam. Keith would normally phone me if there were any issues. Kassam did phone to confirm the discussion he had with KH about the Licence. We concluded that I would check with KH.

3. Can you confirm that you had discussions with 'Ormrod' on Monday 16th April 2007?
 - What was the purpose of that discussion?
 - Were any notes of the discussion retained?
 - What decisions were reached?
 - What would you summarise as the outcome of that discussion?

I can confirm that I met and had discussions with Sean Ormrod on Monday 16th April as well as with the marketing staff who filled me into how they were being treated and had been for years. I had had several discussions with Mr Ormrod, KH and David Loudfoot. I was aware that there were issues between them regarding management styles, operational issues and how staffs were treated by KH and DL. I did meet with the staff as stated who felt that they had never been to the third floor of the building unless asked by KH and DL -they had never had staff meetings <EXEMPT 11> . They were grateful for my visit which was the first time ever a member or Chair of the Board had met with them.

4. Were you involved in any of the discussions with the Trust's legal advisors on the 17th April 2007?
 - What were those discussions?
 - What was the content of their advice?
 - What conclusions were reached?

I do not recall being involved in any discussions with the Trust's legal advisors on 17th April regarding the licence.

5. Did you receive the briefing note (Chairs Briefing Note – April 2007) on the 17th April and can you confirm that your email system acknowledged this receipt some minutes later?

I received the note in question.

6. Is the briefing note supplied by Keith Holder (attached) the same as the one you received on the 17th April?

I presume so.

7. If so do you accept that the briefing note is clear officer advice that:

(Please respond to each of these in turn)

- 'Kassam' had 'no easy escape' from the transfer arrangement
- That 'Kassam' would be challengeable for non performance if he did withdraw
- That no 'methodology' was available to 'Kassam' which would allow him to 'get out'
- That a possibility existed that the whole 'I want out' scenario might simply be a mechanism to launch an inducement argument
- Caution should be exercised
- That there do not appear to be any grounds for a 'rushed decision'
- That any decision to financially assist 'Kassam' would generate public opposition and that any assistance would have to be restricted to some legitimate expense prior to transfer. This latter course having the danger of non recovery being exposed by the liquidator.
- That the process is on track to deliver and that no further action is necessary at this point other than to keep 'a watchful eye' on progress.

I noted the contents of the note and took no further action bearing in mind that KH and Kassam had discussed matters prior.

8. In your interview you stated that you could not recall having any briefings on the licence. Why did you not feel it was pertinent to raise this briefing at that time?

I confirm that I did not receive any particular briefing/s nor discussions regarding any of the proposed changes to the licence and profit or loss implications.

9. Can you confirm that, following the briefing note, you contacted Keith Holder and 'made it clear' that the arrangements with Firoka were not to be jeopardised?

I did not contact Keith Holder to 'make it clear' to him as stated. Keith later informed me that the licence could be novated along with the staff on secondment for a limited period

Given APTL's financial position. See his appendix 2 dated 1 August 2007. (I attach a copy of the Written Resolution of the Directors). I wondered at the time why he felt it could now be done. He asked when it should be done by and whether it should be done prior to the Group AGM and I remember saying 'if it can be achieved'. He did not however explain why he changed his mind though.

10. Can you confirm that you had discussions with other senior politicians who had agreed that Firoka could operate on the same basis as the lease? If so, whom?

Yes, Councillor Meehan as Leader of the Council. I checked everything out with him before actioning and prior to informing my Labour colleagues as our objective was to transfer the risks. I believe the Chief Executive was going to telephone Keith following my discussion with Councillor Meehan.

11. Did you brief other Members of the AP&P Board before the meeting on 24 April 07 on the substance of KH's briefing paper to you? or copy/show it to other Board Members?"

No, I did not as KH was now progressing matters contrary to his note.

12. Can you confirm that, at meetings in October and November, you referred to such discussions with politicians accordingly?

This is correct.

13. Keith Holder's briefing note suggests that the Leader of the Council, although aware of the licence arrangement, was not aware that this included the retention of profits

This is also correct. As stated in 8 above, there were no discussions or briefings about profit share or loss percentages.

14. Keith Holder implies that he was instructed to produce the report that went to the Board on 24th April 2007. Did you see your discussions with him as an instruction? If not, how would you describe them?

Certainly not. KH advised that it would not be prudent to prepare a full report and that what was needed to progress the secondment and licence was to have a brief outline to the meeting for approval as he felt that the information (within a report) could be leaked as has often been the case.

15. Did you instruct David Loudfoot and Ken Harington to sign the licence?

No, I did not. In fact, following the Board meeting on 24th April, I cannot recall having any further discussions with officers at the Palace regarding any change/s to the licence or progress. (I was not aware of who signed it or when it was signed as I thought KH was dealing with all matters).

16. Keith Holder agrees that he was present at that meeting? Did he offer any advice to David Loudfoot and/or Ken Harington at that time?

I cannot comment as I was not present at the signing.

17. Keith Holder alleges that the response from Firoka to many of the difficulties in resolving disputes on the licence was that 'Cllr Adje agreed the detail and will confirm our view'. This is clearly contrary to many of the points raised in our interview. Do you continue to maintain that you had no involvement in the detail of the licence either in its composition or in the discussions with Firoka that led to the licence and its terms?

I confirm that I did not have any detailed discussions with Kassam about the Licence nor did I have any involvement in the detail or composition of the Licence. If I did, I would certainly know the details and confirm same but I did not and still do not. I have not seen the licence and do not know what it looked like before or now. Everyone deferred to Keith as the font of all knowledge as far as these matters are concerned. Keith led on all the negotiations. On the issue of the comments by Firoka, I would ask why Keith did not check / corroborate this with me. This is the first I have heard of this statement. I cannot fathom why Keith would suggest that he was instructed or pressurised to complete the Licence by 4th or 5th May when as you both know deadlines can and are often missed. If Keith was having difficulties with Kassam why did he not report back or call me as he often had done? Whenever there had been issues or problems with Kassam, Keith would phone me or ask for a meeting. I would then speak to Cllr Meehan depending on the issue at hand. I received no such calls during the Licence negotiations from either Keith or David Loudfoot.

I would also like to know why, if legal advice or Counsel opinion were sought they were not provided to me or the Board prior to completion. It was Keith who called and advised me to continue as the Chair of APTL after my Group's AGM despite my concern about possible potential conflict. He said that there was no conflict and that it was only for a short period as the transfer to Firoka would soon be complete and the company wound up. He felt it was too much trouble to go through the process of completing forms to change directors and signatures. Just so that you know, Keith did thank me for letting him run the business without any interference. He said he was very grateful and appreciated it. I am very disheartened and disappointed at his current stance. I feel rather let down.

Key Dates

11 th April 2007	Meeting takes place between Firoka, Cllr. Adje and Keith Holder
14/15 April	Alleged telephone discussions between Cllr. Adje and Kassam take place
16 th April	Understanding that draft charity commission order is about to be approved.
17 th April 2007	Keith Holder emails Cllr. Adje briefing note on potential for Firoka withdrawal apparently on Cllr. Adje's request.
24 th April 2007	Report produced and tabled to board meeting of APPT
1 st May 2007	Keith Holder commences consultancy contract David Loudfoot commences as General Manager
4 th May 2007	Licence signed and becomes operative a few days later
1 st August	Licence expires Meeting of APTL takes place
5 th October	Judicial Review Successful
10 th October	Meeting of APPT takes place to consider Judicial Review Outcome
21 st October	Meeting between APPT officers and Firoka to consider options for way ahead
Early November	Meeting between officers of LBH and APPT to consider Firoka requirements
7 th November	Legal Advisor to Trust receives first sight of copy of licence
15 th November	Meeting between Officers and Members of LBH and APPT to consider strategy
26 th November	Chief Executive meets with Firoka
27 th November	Director of Corporate Resources receives copy of licence
5 th December	APPT takes decision to revoke