



NOTICE OF MEETING

Special Alexandra Palace and Park Board

THURSDAY, 19TH MARCH, 2009 at 19:30 HRS – THE LONDESBOROUGH ROOM,
ALEXANDRA PALACE, ALEXANDRA PALACE WAY, WOOD GREEN, LONDON N22 7AY.

Councillors:

Councillor Egan (Chair), Dogus (Vice-Chair), Hare, Oakes, Peacock, Stanton and Williams

Non-voting representatives:

Ms V. Paley, Mr M. Tarpey and Mr N Willmott
(Alexandra Palace and Park Consultative Committee).

Observer:

Mr D. Liebeck (Chair, Alexandra Park and Palace Advisory Committee).

AGENDA

1. **APOLOGIES FOR ABSENCE**
2. **URGENT BUSINESS**

The Chair will consider the admission of any late reports, related to items below, which will be considered under those agenda items. In accordance with the Council's Constitution – Part 4 Section B – para 17, as the meeting is 'Special' no other business will be transacted at the meeting other than those Items listed below.

3. **DECLARATIONS OF INTERESTS**

A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

A member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgment of the public interest **and** if this interest affects their financial position or the financial position of a person or body as described in paragraph 8 of the Code of Conduct **and/or** if it relates to the determining of any approval, consent, licence, permission or registration in relation to them or any person or body described in paragraph 8 of the Code of Conduct.

4. BUDGET AND BUSINESS PLAN 2009 - 2010

Report of the General Manager Alexandra Palace – To inform the Board of the proposed budget and business plan 2009/2010.

5. CHARITY INDEMNIFICATION OF LONDON BOROUGH OF HARINGEY (PAGES 1 - 68)

Report of the General manager – Alexandra Palace

It being a special meeting, under the Council's Constitution, Part 4, Section B, Paragraph 17, no other business shall be considered.

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11 March 2009



Agenda item:

Alexandra Palace & Park Board**On 19th March 2009**

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

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

1. Purpose

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

2. Recommendations

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

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

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

3. Executive Summary

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

4. Reasons for any change in policy or for new policy development (if applicable)

4.1 N/A

5. Local Government (Access to Information) Act 1985

5.1 In drafting this report, reference has been made to the following documents:
Correspondence between Treasury solicitor and LBH between 1 May 1996 and 27th September 2006
District auditor public interest report dated September 1999
Accounts of Alexandra Palace Charitable Trust 2007/2008

6. Report

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

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

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

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

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

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

6.12 These are broken down into:

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

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

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

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

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

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

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

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

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

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

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

7. Consultation

- 7.1 N/A

8. Recommendations

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

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

9. Legal Implications

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

10. Financial Implications

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

11. Use of Appendices/Tables/Photographs

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



THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SV

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

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

Direct Line 0171 210 3332

Please quote:

L90/6162/CJR/L8

Your reference:

Date:

1st May 1996

Dear Mr Singh

ALEXANDRA PARK AND PALACE

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

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

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

The revenue deficit

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

1. Period up to 31st March 1987

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

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

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

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

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

2. Year ended 31st March 1988

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

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

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

3. 1988/9 and 1989/90

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

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

4. 1990/1

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

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

5. 1991/2 - 1994/5

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

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

Interest

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

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

Capital deficit

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

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

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

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

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

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

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

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

Resolution of the disputed liability

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

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

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

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

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

Decisions in relation to the proposed development

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

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

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

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

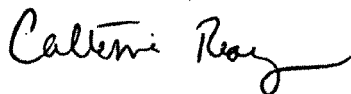
It is also vital that the Advisory Committee have a proper opportunity to fulfil their statutory functions under the 1985 Act. Their role (set out in paragraph 19 of Schedule 1) is to consider and advise the trustees on various matters, which specifically include general policy relating to activities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

The Council as trustee

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

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

Yours sincerely



CATHERINE REAY
for The Treasury Solicitor

HARINGEY COUNCIL

Corporate Services

Alexandra House, 10 Station Road, Wood Green, London, N22 4TR
Tel 0181 975 9700 Fax: 0181 862 3815
Minicom 0181 862 3818

Your ref: L90/6162/CJR/LS
Our ref: DOCS/JP/DS
This matter is being dealt with
by

13th May 1996

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

Dear Ms Reay

Alexandra Park and Palace

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

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

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

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

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

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

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

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

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

Alexandra Palace and Park Board

Alexandra Palace and Park Advisory Committee

Alexandra Palace and Park Development Steering Group

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

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

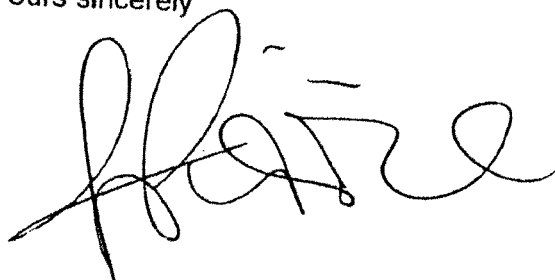
The board decision to put their legal work out to tender was made in the knowledge that Malkins have limited experience in contract matters and suitable expertise would

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

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Elias', written in a cursive style.

DIRECTOR OF CORPORATE SERVICES

APPENDIX 1

Revenue Deficits 1991/92 on

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

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



rec'd 16/5/96

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

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Direct Line 0171 210 3033

The Director of
Corporate Services
Haringey Council
Alexandra House
10 Station Road, Wood Green
LONDON N22 4TR

Please quote: L90/6162/CJR/L8
Your reference: DOCS/JP/DS
Date: 16 May 1996

By Post and Fax

Dear Sir

RE: ALEXANDRA PARK AND PALACE

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

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

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

Yours faithfully

for the Treasury Solicitor

HARINGEY COUNCIL

cc Leader
J Pirrie
K Holdel

LB

1(a)

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

bcc I Harris, Malkin S

CE/GS/eml

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

31 July 1996

Dear Ms Reay

Alexandra Palace and Park

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

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

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

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

1. General Comments.

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

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

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

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

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

2. Capital element of the deficit.

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

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

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

3. Further indemnification for operating deficits.

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

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

- 5 -

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

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

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

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

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

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

In summary therefore I am seeking :

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

- 6 -

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

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

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

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'Gurbux Singh', written over a horizontal line.

Gurbux Singh
CHIEF EXECUTIVE

APPENDIX 1

Revenue Deficits 1991/92 on

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

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



5/8

MARRIAGE
CIVIL SERVICE

5 AUG 1996

CE

THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

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10)

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

Direct Line 0171 210 3332

Please quote:

L90/6162/CJR/L8 JKH.

Your reference:

CE/GS/eml

Date:

2nd August 1996

Dear Mr Singh

ALEXANDRA PARK AND PALACE

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

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

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

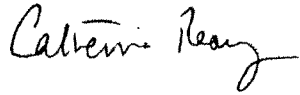
I am now in a position to reply on the figures (including interest) which you set out in the Appendix to your letter of 13th May 1996:

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

that and any future years.

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

Yours sincerely



CATHERINE REAY
for the Treasury Solicitor

cc Lester

HARINGEY COUNCIL

Chief Executive

Civic Centre, Wood Green, London N22 4LE
Tel 081 975 9700 Fax 081 862 2906

CE/GS/DS

9th August 1996

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

Dear Ms Reay

Alexandra Park and Palace

Thank you for your swift response to my letter of 31st July 1996.

I had answered the points you raised in relation to "Year ended 31st March 1988" and the first full sentence of page 3 within paragraph 3a on page 4 of my letter dated 31 July. However as the point is not clear I will attempt a fuller explanation.

Major works such as those executed at the Palace are subject to contract and the expenditure incurred is phased through the project. There will be start-up costs, valuations, commitments for those parts of the contract legally committed but not yet started, retentions throughout the contract arising from sub-contracts to the main contract, and at the end of the contract a final account to bring together all the expenditure into a single document.

Retention monies are sums, usually 5% or 10% but in some cases 15%, deducted from the value of work done per interim valuations. The money is retained by the client until the completion of contracts and only paid after any snagging works have been carried and a final account agreed between client and contractor. It is not unusual for the agreement of the final account and payment to take two or three years after physical completion of the works. You will appreciate that in the case of the refurbishment of Alexandra Palace the retention sums were considerable.

As I stated in my previous correspondence the Trustees were aware as early as the summer of 1986 that an overspend of available resources was inevitable if the project was to be completed. This assessment was made on the basis of projections

containing those elements referred to above. The most prominent element was those works legally committed but not (at that time) started.

The estimates of final out-turn were based upon all the works, including those legally committed, being reflected in a projected final account as is standard practise within the building industry.

We therefore arrive at a position where the commitments to the end of the project match or exceed the available resources.

I now turn specifically to the year ended 31st March 1988. The revenue deficit for which the Council is seeking indemnification is £1.5 million (as stated in John Pirrie's letter of 23rd November 1995).

The resources available to the Trust at 1st April 1987 were required to meet the contractually committed capital expenditure including retention monies. The General Manager estimated that for 1987/88 he would make a surplus on the operation of the temporary facilities. In the event a deficit was incurred. The Council was therefore in the position of having to finance the operational deficit for the year. The Trust had been able to use the cash it had in hand to meet its capital commitments to pay the running costs until January 1988.

It is recognised that interest should only accrue from the point that the Trust was supported financially. This approach was endorsed by the Touche Ross report where interest was applied from January 1988.

With regard to the financial years 1988/89, 1989/90 and 1990/91 the position is similar to 1987/88. The Trust did not have resources or cash available to meet the operational deficits incurred. Before the commencement of each of those years the General Manager prepared estimates of operational expenditure and income. For each of the years a surplus was forecast but in each of the years an operational deficit, taking into account maintenance of the Park, was incurred which the Council financed. The Council approached the Charity Commission to seek agreement of entitlement to indemnification in respect of the 1991/92 operational deficit because that was the first year in which an operational deficit was forecast at the onset of the year.

It would be difficult to argue that the revenue expenditure was other than properly and reasonably incurred. The Trust received advice that financial outcomes were sustainable over an extended period and would be sufficient to service the operating debt in the earlier years. The downturn in the economy generally had a disproportionate effect on the Palace business and the anticipated surpluses did not materialise. The financial support provided by the Council over this period was known to the Trust and agreed by the Trustees.

I am therefore seeking your agreement that the Council is entitled to indemnification from trust assets for monies advanced to meet the operational deficits incurred in the

years 1987/88 to 1990/91 inclusive. With your agreement to the principle the sums would be recast to take into account movements in "working capital" and relevant interest would be applied as agreed with the District Auditor. A full schedule would then be submitted for your approval.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'Q' followed by a series of connected loops and a long horizontal flourish extending to the right.

CHIEF EXECUTIVE



THE TREASURY SOLICITOR

Queen Anne's Chambers, 28 Broadway, London SW1H 9JS

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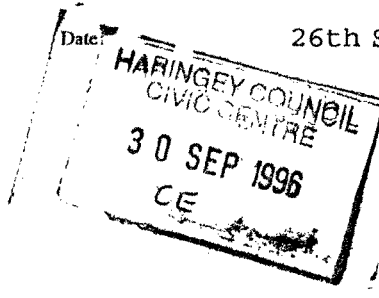
Direct Line 0171 210 3332

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

Please quote: L90/6162/CJR/L8

Your reference: CE/GS/em1

Date: 26th September 1996



Dear Mr Singh,

ALEXANDRA PARK AND PALACE

I am now in a position to reply to the outstanding points in your letters of 31st July and 9th August. I have also received a letter from Malkins of 7th August 1996, which I understand you approved in draft.

The Attorney General is not prepared to accept the Council's claim for an indemnity in respect of operating deficits for the years 1987/8 to 1990/1.

As regards 1987/8, you say in your letter of 9th August that the Council only started making payments in January 1988. It is therefore only in respect of any operating deficit occurring after this date that any question of an indemnity could possibly arise. Before that date, the deficit was being met by the Trust from its own resources, in exactly the same way as in the preceding years up to 31st March 1987, for which you have accepted that the Council can claim no indemnity. I do not know exactly how much the Council contributed towards operating costs in the period from January 1988 until the end of March 1988, but I assume that it may be in the region of £250,000, as suggested on page 3 of my letter of 1st May.

The total amount in issue for the years 1987/8 to 1990/1 is thus likely to be only about £1 million rather than the total of £2.399 million which you refer to on page 3 of your letter of 31st July. (Please note that your figures for 1988/9 and 1989/90 would need to be amended to take account of adjustments to working balances, and the effect of such adjustments in 1990/1 is to change the deficit into a small surplus).

The Attorney General is still firmly of the view that this operating deficit cannot be considered in isolation from the capital overspend. You say that money previously earmarked for operating costs had to be used for capital work because otherwise it would have meant the Trustees leaving the Palace in a part-built state without any potential for generating income in the future. That may be true, but it merely emphasises the point that the need for extra funds to meet an operating deficit only arose because of the huge overrun on the cost of the development.

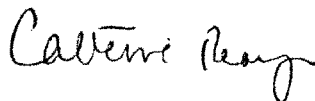
The Council's right to an indemnity for any operating deficit for the period from January 1988 to 31st March 1990 therefore remains in dispute. However, the Attorney General does not consider that this on its own need prevent the Council and the Charity Commissioners from taking whatever steps are now required to apply for a scheme and to continue to negotiate the proposed development. The debt issue can now be treated as sufficiently resolved for that purpose, provided that the Council accept that any remaining claim could only relate to the period after January 1988.

Malkins' letter also asks for confirmation that the amounts for which the Council is entitled to an indemnity may be recouped from the capital which the charity receives on the grant of a building lease. I do not dispute the principle that the charity should pay its debts if it has funds to do so, including debts owed to the Council as Trustee. But I must stress that the development is intended not merely to provide funds to repay the charity's debt, but also to ensure that its future running is put on a sound financial footing. This means that future running costs will have to be provided for, either by the developer meeting them directly or by the Council recognising that they will have to meet any shortfall as a revenue expense from year to year.

Finally, I have noted the additional points which you make in paragraphs 1(d) to (f) of your letter of 31st July 1996. In the circumstances, it is unnecessary for me to comment on these any further, but that does not mean that they are accepted.

On receiving your confirmation that no claim is pursued for any operating deficit before January 1988, I shall write to the Charity Commissioners confirming that the debt issue is sufficiently resolved for them to take whatever steps they now regard as appropriate towards the making of a scheme.

Yours sincerely



CATHERINE REAY
for The Treasury Solicitor

C.C. Gurbux Singh

HARINGEY COUNCIL

Corporate Services

Alexandra House, 10 Station Road, Wood Green, London N22 4TR
Tel 0181 975 9700 Fax: 0181 862 3815
Minicom 0181 862 3818

Your ref: L90/6162/CJR/L8

Our ref: DOCS/JP/DS
This matter is being dealt with

by

Direct line:

27th September 1996

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

Dear Ms Reay

Alexandra Park and Palace

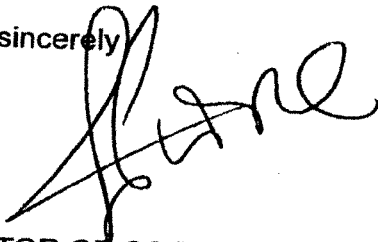
Thank you for your letter of 26th September 1996, addressed to Mr Singh who asked me to respond on his behalf.

I can confirm that Haringey Council is not seeking indemnification for monies advanced to the trust for the period before January 1988. The Council will continue to pursue its claim for right to indemnity of the operating deficits for the period January 1988 to 31st March 1990. I would wish to correct one misapprehension. The Council has decided not to pursue its claim further because it has had to accept that the Trust will not have the resources to indemnify more than the revenue deficits plus interest from January 1988.

The Council will be happy to note that the Attorney General considers the debt issue sufficiently resolved to allow the application for a scheme and negotiation of the proposed development.

I should be pleased, therefore, if you would write as soon as possible to the Charity Commissioners confirming that the debt issue is sufficiently resolved for them to take appropriate steps towards the making of a scheme.

Yours sincerely



DIRECTOR OF CORPORATE SERVICES

**District Auditor's Report
to Haringey Council**

Report in the Public Interest Under Section 8, Audit Commission Act 1998
Audit 1994/95 and 1995/96

Public Interest Report

J McWhirr, District Auditor

Introduction

- 1 I am the District Auditor appointed to audit the accounts of Haringey London Borough Council ("the Council") and the Alexandra Park and Palace Trust ("the Trust") for the financial years ending 31 March 1995 and 31 March 1996.
- 2 At the audit of the Council's accounts for these two years, in letters dated 11 February 1996 and 30 June 1997, two local government electors exercised their right to make objections under 17(3) of the Local Government Finance Act 1982 ("the 1982 Act") to the accounts of the Council. Further submissions in support of the objections are contained in the correspondence from the Objectors, culminating in a letter dated 9 July 1999. The objections concern expenditure by the Council on the rebuilding of the Alexandra Palace following a fire and the Council's financing of the Trust's annual deficits thereafter. The Objectors have invited me to take action under sections 15(3), 19 and 20 of the 1982 Act. The relevant provisions of the 1982 Act were repealed and re-enacted by the consolidating Audit Commission Act 1998 ("the 1998 Act").

The Objections

- 3 The objections may be summarised as follows:
 - (a) the Objectors contend that I should seek a declaration under section 19 of the 1982 Act (now section 17 of the 1998 Act) that the following items of account in the Council's accounts for the financial year 1994/95 are "contrary to law":
 - (i) in the analysis of debts falling due to the Council within one year, "Alexandra Palace £51,305,000"
 - (ii) in the accounts of the Alexandra Park and Palace Trust ("the Trust") (which are included within the Council's accounts), in the balance sheet, under current liabilities, "Cash Overdrawn £48,550,341" and in the income and expenditure account, "Interest £4,436,664".

The Objectors make the same contentions with regard to the corresponding items in the Council's and the Trust's accounts for the financial year 1995/96.

- (b) The Objectors assert that the above items of account are "contrary to law" on the grounds that:
 - (i) insofar as most of the £51.305m sum (and the corresponding entry for 1995/96) is irrecoverable from the Trust, its classification as a short term debt in the Council's accounts and cash overdrawn in the Trust's accounts falsifies the real financial position

Detailed Report

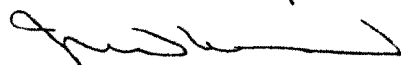
- (ii) insofar as the Council had no power to incur the expenditure or to lend money to the trustee to fund a revenue deficit in the Trust's accounts, expenditure incurred by the Council for that purpose was *ultra vires*.
 - (c) The Objectors contend that I am under a duty under section 20 of the 1982 Act (now section 18 of the 1998 Act) to certify the sums expended by the Council on the Alexandra Palace and Park, after 1990, as due from:
 - (i) John Pirrie (the officer responsible under section 151 of the Local Government Act 1972 for the administration of the Council's financial affairs from 1987 to 1996)
 - (ii) Toby Harris (Leader of the Council from 1987 to 1999)
 - (iii) Gurbux Singh (Chief Executive of the Council since 1989).
 - (d) The Objectors allege that between 1994 and 1996 approximately £100,000 of Trust monies was spent on consultants in the preparation of a bid for Central Government funds for the Millennium and object to the incurring of that expenditure. In addition, they object to expenses incurred by the Chair of the Board of Trustees, former Councillor Derek Wyatt, in visiting the Conservative Party Conference in connection with the Millennium Bid. The Objectors claim that those monies and expenses were not "legally and properly incurred". I am invited by the Objectors to take action under section 19 of the 1982 Act (now section 17 of the 1998 Act) and to certify the sums in question as due from former Councillor Wyatt as representing losses in the Council's accounts incurred by his wilful misconduct.
 - (e) The Objectors allege that a payment of £5,000 by the Council to a consultant in the search for development funds for the Trust, was incorrectly authorised. It is claimed that this sum should be certified under section 20 of the 1982 Act (now section 18 of the 1998 Act) as due from Mr Pirrie.
 - (f) The Objectors in addition request that I issue a report in the public interest under section 15(3) of the 1982 Act (now section 8 of the 1998 Act).
- 4 Section 8 of the 1998 Act requires me to consider whether, in the public interest, I should make a report on any matter coming to my notice in the course of the audit, in order for it to be considered by the body concerned or brought to the attention of the public. Section 17 of the 1998 Act requires me to consider whether I should apply to the Court for a declaration that an item of account is contrary to law. Section 18 of the 1998 Act requires me to certify as due from any person the amount of any loss caused to the Council by his/her wilful misconduct.

My Investigation

- 5 I have carried out a careful investigation. I have reviewed substantial documentation in the possession of the Council. As required by paragraph 102 of the Code of Audit Practice, I have made available documents which may be material to my decision to the Objectors and afforded them the opportunity of commenting thereon. I have sought and had regard to representations made by the Council and those alleged by the Objectors to be guilty of wilful misconduct in response to the objections.

Conclusion

- 6 Albeit I have found there to be items of account in the Council's and the Trust's accounts that are "contrary to law", after careful consideration I have decided, in the exercise of my discretion, not to make an application to Court under section 17 of the 1998 Act. I have concluded moreover that I have no duty to perform under section 18 of the 1998 Act. I am not persuaded that any of the named Respondents to the objection (referred to in paragraph 3(c), (d) and (e) above) are guilty of wilful misconduct. The Objectors have a right of appeal to the High Court against my decision.
- 7 I have, however, decided to uphold the objections insofar as they invite me to make a report in the public interest under section 8 of the 1998 Act. I consider that the matters before me have generated considerable public concern and that it would be in the public interest to report on my findings and views. I append to this report my Statement of Reasons for my decision not to uphold the objections insofar as they invite me to take action under sections 17 and 18 of the 1998 Act.
- 8 I propose to issue a further report in the public interest which will address a number of the issues identified in the course of my investigation and will consider the implications for the Council of these issues. I intend to publish the further report in the Autumn.



J McWhirr
Regional Director
1 September 1999

Appendix - Statement of Reasons

Haringey Council

31 March 1995 and 31 March 1996

Detailed Report

J McWhirr, District Auditor

INTRODUCTION

- 1 I am the auditor appointed, pursuant to the Audit Commission Act 1998 ("the 1998 Act"), by the Audit Commission for Local Authorities and the National Health Service to audit the accounts of the Haringey Council ("the Council"), including the accounts maintained by the Council as the statutory trustee of the Alexandra Park and Palace Trust ("the Trust").
- 2 At the audits of the accounts of the Council for the years ended 31 March 1995 and 31 March 1996, two local government electors, Ms J Solomon and Mr P Henebry ("the Objectors") exercised their right to make objections under section 17(3) of the Local Government Finance Act 1982 ("the 1982 Act") (now section 16(1) of the 1998 Act) to the accounts of the Council.
- 3 Part III of the 1982 Act was repealed and re-enacted by the consolidating 1998 Act which came into force on 11 September 1998.

The Objections

- 4 The objections were made in a notice of objection enclosed with a letter from the Objectors dated 11 February 1996. A fuller statement of the grounds of objection was subsequently given in a notice of objection enclosed with a letter dated 30 June 1997. Further submissions in support of the objections are contained in correspondence from the Objectors, culminating in a letter dated 9 July 1999, to which I have had regard in my consideration and determination of the objections.
- 5 The objections may be summarised as follows:
 - (a) The Objectors contend that I should seek a declaration under section 19 of the 1982 Act (now section 17 of the 1998 Act) that the following items of account in the Council's accounts for the financial year 1994/95 are "contrary to law":
 - (i) in the analysis of debts falling due to the Council within one year, "Alexandra Palace £51,305,000"
 - (ii) in the accounts of the Trust (which are included within the Council's accounts), in the balance sheet, under current liabilities, "Cash Overdrawn £48,550,341" and in the income and expenditure account, "Interest £4,436,664".

The Objectors make the same contentions with regard to the corresponding items in the Council's and the Trust's accounts for the financial year 1995/96.

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- (b) The Objectors assert that the above items of account are "contrary to law" on the grounds that:
- (i) insofar as most of the £51.305m sum (and the corresponding entry for 1995/96) is irrecoverable from the Trust, its classification as a short term debt in the Council's accounts and cash overdrawn in the Trust's accounts falsifies the real financial position
 - (ii) insofar as the Council had no power to incur the expenditure or to lend money to the trustee to fund a revenue deficit in the Trust's accounts, expenditure incurred by the Council for that purpose was *ultra vires*.

- (c) The Objectors contend that I am under a duty under section 20 of the 1982 Act (now section 18 of the 1998 Act) to certify the sums expended by the Council on the Alexandra Palace and Park, after 1990, as due from:

- (i) John Pirrie (the Council's Chief Financial Officer from 1987 to 1996)
- (ii) Toby Harris (Leader of the Council from 1987 to 1999)
- (iii) Gurbux Singh (Chief Executive of the Council since 1989).

The Objectors assert that, on the basis that the above persons must always have been aware that the Council did not have the power to "subsidise" the Trust, the expenditure in question gave rise to losses in the Council's accounts incurred by the wilful misconduct of the three named Respondents to the Objection.

- (d) The Objectors allege that, between 1994 and 1996, approximately £100,000 of Trust monies was spent on consultants in the preparation of a bid for Central Government funds for the Millennium and object to the incurring of that expenditure. In addition, they object to expenses incurred by the Chair of the Board of Trustees, former Councillor Derek Wyatt, in visiting the Conservative Party Conference in connection with the Millennium Bid. The Objectors claim that those monies and expenses were not "legally and properly incurred". I am invited by the Objectors to take action under section 19 of the 1982 Act (now section 17 of the 1998 Act) and to certify the sums in question as due from former Councillor Wyatt as representing losses in the Council's accounts incurred by his wilful misconduct.

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- (c) The Objectors allege that a payment of £5,000 by the Council to a consultant to search for development funds for the Trust, was incorrectly authorised. It is claimed that this sum should be certified under section 20 of the 1982 Act (now section 18 of the 1998 Act) as due from Mr Pirrie.
 - (f) The Objectors request that I issue a report in the public interest under section 15(3) of the 1982 Act (now section 8 of the 1998 Act).
- 6 I have carried out a careful investigation. I have reviewed substantial documentation in the possession of the Council. As required by paragraph 102 of the Code of Audit Practice, I have made available documents which may be material to my decision to the Objectors and afforded them the opportunity of commenting thereon. I have sought and had regard to representations made by the Council and those alleged by the Objectors to be guilty of wilful misconduct in response to the objections.
- 7 This document constitutes my statement of reasons for my decision on the objections.

AN AUDITOR'S POWERS AND DUTIES

- 8 Section 17 of the 1998 Act (formerly section 19(1) to (3) of the 1982 Act) provides as follows:
- "(1) Where -*
- (a) it appears to the auditor carrying out an audit under this Act, other than an audit of accounts of a health service body, that an item of account is contrary to law, and*
 - (b) the item is not sanctioned by the Secretary of State,*
- the auditor may apply to the Court for a declaration that the item is contrary to law.*
- (2) On an application under this section the Court may make or refuse to make the declaration asked for, and if it makes the declaration then, subject to subsection (3) it may also-*
- (a) order that any person responsible for incurring or authorising expenditure declared unlawful shall repay it in whole or in part to the body in question and, where there are two or more such persons, that they shall be jointly and severally liable to do so*
 - (b) if the expenditure declared unlawful exceeds £2,000 and the person responsible for incurring or authorising it is, or was at the time of his conduct in question, a member of a local authority, order him to be disqualified for being a member of a local authority for a specified period; and*

(c) order rectification of the accounts.

(3) The Court shall not make an order under subsection (2)(a) or (b) if satisfied that the person responsible for incurring or authorising the expenditure acted reasonably or in the belief that the expenditure was authorised by law, and in any other case shall have regard to all the circumstances, including that person's means and ability to repay the expenditure or any part of it".

- 9 An item of account recording expenditure and income is "contrary to law" within the meaning of that phrase in section 17 of the 1998 Act if, inter alia, it records expenditure or income which a local authority had no power to incur or receive or which was incurred without authority or which was otherwise *ultra vires* (Roberts v Hopwood [1925] AC 578; Beecham v Metropolitan District Auditor (1976) 75 LGR 79) or which was debited or credited to the wrong fund or account (Stockdale v Haringey London Borough Council (1990) 88 LGR 7).
- 10 In determining whether an item of account is "contrary to law", neither the Courts nor an auditor are entitled to substitute their own view of what may be a desirable policy for the view of a local authority. The Courts may only intervene, on the application of an auditor or otherwise, if, in exercising a discretion conferred on it by Parliament, a local authority has acted unlawfully. A local authority may act unlawfully, for example, by acting for an improper purpose, by misdirecting itself in law, by failing to take into account a matter it was bound to take into account, by taking into account a factor it ought not to take into account or by reaching a conclusion that no local authority acting reasonably could reach (see, for example, Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223; Giddens v Harlow District Auditor (1972) 70 LGR 485).
- 11 Section 18 of the 1998 Act (formerly section 20 of the 1982 Act) provides:
- "(1) Where it appears to the auditor carrying out an audit under this Act, other than an audit of accounts of a health service body -*
-
- (b) that a loss has been incurred or deficiency caused by the wilful misconduct of any person,*
- the auditor shall certify that the amount of the loss or the deficiency is due from that person.*
- (2) Subject to subsections (4) and (8), both the auditor and the body concerned (or, if it is a parish meeting, its chairman) may recover for the benefit of the body a sum or amount certified under this section as due; and if the sum or amount is certified to be due from two or more persons, they shall be jointly and severally liable for it".*

- 12 Wilful misconduct means deliberately doing something which is wrong, knowing it to be wrong or with reckless indifference as to whether it is wrong or not (see, for example, Graham v Teesdale (1983) 81 LGR 117). This definition which must be read so as to include wrongful omissions to act was cited with approval in Lloyd and Others v McMahon [1987] 1 AC 625. Misconduct occasioned by imprudence, negligence, excess of zeal, misplaced enthusiasm, error or lack of judgment falls short of wilful misconduct. Absent recklessness, an honest belief that the conduct in question was lawful will prevent a finding of wilful misconduct.
- 13 I am mindful of the seriousness of a charge of wilful misconduct. I remind myself that, although a section 18 enquiry is not a criminal proceeding, it should take a lot of evidence to tip the balance in favour of a positive finding of wilful misconduct, because the accusation is serious and the consequences of such a finding are grave (see Lawton LJ in Lloyd and Others v McMahon [1987] 1 AC 625, 647).

BACKGROUND

The Trust

- 14 The Alexandra Park and Palace (Public Purposes) Act 1900 ("the 1900 Act"), constituted a body corporate of trustees to maintain and manage the Alexandra Park and Palace ("the Park and Palace"). By the Alexandra Park and Palace Order 1966, the functions of that trustee were transferred to the Greater London Council ("the GLC"). By agreement, the trusteeship of the Trust, together with £8.5m, was transferred from the GLC to the Council on 1 January 1980.
- 15 The Council now holds the Park and Palace on the substantive trusts contained in the 1900 Act with the powers set out in that Act as extended and modified by the Alexandra Park & Palace Act 1913, the Alexandra Park and Palace Order 1966 and most recently the Alexandra Park and Palace Act 1985 ("the 1985 Act"). The duties and powers of the Council as trustee of the Trust are set out in Schedule 3 to the 1985 Act and include:

"SCHEDULE 3

.....

Alexandra Park & Palace (Public Purposes) Act 1900

.....

- 17 *The Trustees shall have the entire control and management of the park and palace acquired by them as such trustees together with all buildings now existing or hereafter erected thereon and they may exercise the following powers (that is to say):*

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(i) *They shall uphold maintain and repair the palace and other brick and stone buildings and may improve and extend the park lands and buildings.....*

.....

(vi) *They may close any part of the palace and park for not more than fourteen days in any one year to the exclusion of the public except on payment of such admission fee as shall be fixed by the Trustees.....*

.....

Subject to the foregoing provisions the park and other lands shall be maintained as an open space and the park palace and other lands shall be available for the free use and recreation of the public for ever".

16 The Trust is a charity and is registered as such under the Charities Act 1993.

Fire damage and reinstatement

17 In July 1980, there was a fire at the Palace which caused considerable damage. An insurance settlement of £18.5m was received during 1981.

18 On 1 June 1981, the Council was advised by Leading Counsel, Leonard Bromley QC, that it was under an obligation substantially to reinstate the fire damaged Palace. They were advised that:

"The obligation is one of substantial reinstatement which can I think take advantage of modern materials and methods which must bear in mind the function imposed on the Palace by the statutory regime under the private Acts".

19 In April 1984, the Council entered into a contract for the rebuilding works with Taylor Woodrow Management Contracting Limited in the sum of approximately £35.4m, which it planned to finance using the £18.5m insurance proceeds, the £8.5m received from the GLC and accrued interest (the total available funds by then being in excess of £42m). The rebuilding programme started in 1984. The Palace was partially reopened to the public in 1988 and the building work was finally completed in 1990. The project management was undertaken by the Alexandra Palace Development Team ("the Development Team") within the Council, until August 1988, when Project Management International plc ("PMI") was appointed project manager to replace the Development Team.

The overspend on the rebuilding

20 It became evident during the financial year 1987/88 that a considerable overspend on the rebuilding works contract ("the overspend") was likely. In the same year, the Trust funds became exhausted and the Council as local authority financed the restoration works and other expenditure by the Trust thereafter.

21 PMI was asked to investigate the causes of the overspend. PMI estimated the potential overspend on the restoration works on the Palace to be in the order of £26m. In its report dated 3 February 1989, PMI concluded:

"...The manner in which the project was set up, the inexperience of the Development Team, the lack of Project leadership in an economic sense, the poor performance of the Design and Construction Teams were all significant factors in contributing to the enormous cost overruns.

We have concluded that prime responsibility for this situation lies with the Alexandra Palace Development Team, the Management Team and the Committee must also share some responsibility for allowing this situation to develop when all the warning signs were being flagged for some considerable time."

22 Having financed the overspend, the Council sought to recover its money from Trust funds. On 15 February 1991, the Charity Commission notified the Council of its view that:

"Both we and the Attorney [General] are of the view that the agreement would appear to have been entered into by the Council acting in its capacity as trustee of the charity. We are also both of the view that by meeting the overspend from its corporate funds the Council, as trustee, is in a position of having spent its own funds on obligations owed by the charity and would, under trust law, prima facie be entitled to an indemnity out of the trust estate to the extent of the sums applied. However such indemnity would not arise if it was apparent that the Council acted unreasonably and improperly in incurring those liabilities".

23 The Council has sought to demonstrate that the overspend was incurred reasonably and properly. This dispute has been the subject of extensive correspondence between the Council on the one hand and the Charity Commissioners and the Treasury Solicitor on the other. On 1st May 1996, the Treasury Solicitor wrote to the Council, on behalf of the Attorney General, stating that the Council's claim that the Trust should bear half of the capital deficit (the overspend) was unacceptable. The letter said that the Council needed to dissuade the Attorney General from his *prima facie* view that the overspend was not indemnifiable.

- 24 The Council recognises that, even if it were entitled to a full indemnity out of Trust funds, in practice there are no or insufficient Trust funds to effect the indemnity. The Council's current position is, as set out in a resolution of a special meeting of the Policy and Resources Committee on 20 May 1996, that the Council would not pursue its claim to indemnification in respect of the overspend, subject to not "*admitting that any part of the accumulated deficits was other than reasonably and properly incurred on behalf of the Trust*".

The operating deficits

- 25 The Park and Palace reopened in 1988 but, in its capacity as trustee, the Council has incurred operating deficits each year (except for a small surplus in 1990/91). The Council as local authority has financed these operating deficits and has sought reimbursement from Trust funds.
- 26 By the letter dated 1 May 1996, the Treasury Solicitor, on behalf of the Attorney General, set out his views on whether and to what extent the Council as trustee was entitled to be indemnified for the costs it had incurred in financing the Trust's operating deficits. In expressing the view that no claim for an indemnity for revenue deficit could be accepted for the financial years 1988/89 and 1989/90, it was stated that the Council had not yet "*made out a sufficient case for reimbursement of revenue expenditure in these years*". It was accepted, however, that the Council was entitled to be indemnified for its costs with regard to the Trust's operating deficits for the years 1991/92 to 1994/95 and interest thereon. It was also accepted that the Council should be indemnified for any continuing operating deficit and interest which the Council could show it had incurred reasonably and properly in 1995/6 and "*any further operating deficit which may continue until payments are received from a developer*" (the Council was by then proposing that the Trust's future running costs would be provided for by rental income from a developer). For the Attorney General's view on the overspend on the rebuilding and the extent of indemnity see paragraph 23.
- 27 Despite the Attorney-General's view, the Council maintains its claim in respect of the operating deficits from April 1988 until March 1990 and interest thereon.
- 28 The Trust accounts continue to show that expenditure exceeds income resulting in further operating losses at the Park and Palace. In my view, as matters stand, there is no reasonable prospect of the Council financing the discharge of its statutory duties as trustee from Trust funds alone.

Development of the Park and Palace

- 29 In view of the lack of Trust funds, the deteriorating assets of the Trust and the recurring annual operating deficits incurred in keeping the Park and Palace open, the Council as trustee has sought to attract external resources to put towards the financing of the Trust's deficits and expenditure. Its efforts have included a bid for Millennium funds and a concerted search for developers of and potential investors in the Park and Palace. The Council as trustee now considers that redeveloping the Park and Palace, with a long lease being granted to the developer at a premium, is the most advantageous option for the Trust and for the local taxpayers on whom the burden of the Council discharging its statutory duties as trustee continues to fall. The proposed redevelopment and lease are outside the existing powers of the Council as trustee as contained in the 1985 Act. In order to proceed with its proposal to redevelop the Park and Palace, therefore, the Council requires a variation of the statutory trusts contained in the 1985 Act. After representations made by the Council, the Charity Commissioners decided at a meeting on 6 September 1995 that:
- “1. *The financial situation of the charity was such that there was a failure of the trusts within the meaning of section 13 of the Charities Act 1993 justifying a cyprès scheme and that the Commissioners would be prepared to consider promoting a scheme under section 17 of the 1993 Act given that the existing powers of the charity were insufficient to permit a development of the kind proposed.*
 2. *The powers which would be granted in any such scheme would be of a general nature, with the intention of allowing the Trustee to engage in a viable development of the charity land and protect, as far as possible, the original charitable purposes. These powers will include a power to let a proportion of the charity's land but would not be linked to a particular development”.*
- 30 A development brief was issued on 24 January 1996 which sets out the development objectives and an outline timetable. After inviting and receiving tenders from interested parties for the redevelopment of the Park and Palace, the Council as trustee selected a developer. The Council as trustee and the developer are currently in negotiation.
- 31 In September 1998, the Charity Commission formally agreed to promote a scheme for the variation of the statutory trusts contained in the 1985 Act. It is the Commission's intention to promote an administrative scheme under section 17 of the Charities Act 1993 (as opposed to a cyprès scheme as originally envisaged).

CONSIDERATION OF OBJECTIONS

Identity of Trustees

- 32 I address as a preliminary matter the identity of the trustees of the Trust. This has been the subject of considerable dispute. In my view, it is the Mayor and Burgesses of the London Borough of Haringey, a corporate body incorporated under section 1 of the London Government Act 1963, which is the trustee of the Trust and which holds the Park and Palace on the substantive trusts of the 1900 Act. Such functions as are vested in that corporate body are exercisable by the Council of the London Borough of Haringey (see paragraph 1(2) of Schedule 2 to the Local Government Act 1972).

My approach to the Objections

- 33 My approach to the objections is to consider separately the overspend (incurred by the Council as trustee on the contract to rebuild the Palace) and the Council's financing of the Trust's operating deficits from April 1988. I consider with regard to each whether there are any items of account which are "contrary to law" within the meaning of section 17 of the 1998 Act. I then consider the treatment of the overspend and operating deficits in the Council's and Trust's accounts. In this respect, I have had regard to revisions to the statements of accounts which have been made since the objections were made and on which the Objectors have been given the opportunity to comment.
- 34 Next, I consider the Objectors' contention that expenditure on the Park and Palace incurred after 1990 represents a loss in the Council's accounts in relation to which I am under a duty under section 18 of the 1998 Act ("surcharge for wilful misconduct").
- 35 Finally, I consider particular items of expenditure incurred by the Council, as trustee, on the development of the Park and Palace and more generally, the question of delegated authority for expenditure on the Park and Palace.

The overspend on the rebuilding

- 36 I consider first, in relation to the overspend, whether there are any items of account in the Council's accounts which are "contrary to law" within the meaning of the phrase in section 17 of the 1998 Act. The Objectors contend that the Council had no power to incur the overspend on the rebuilding contract. They claim that section 17 of the 1900 Act, as set out in Schedule 3 to the 1985 Act, does not impose a duty or power on the Council, as trustee, to use its own funds to maintain the Park and Palace but only imposes a duty or power to do so to the extent that Trust funds are available.

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- 37 By virtue of section 17 of the 1900 Act, the Council is under a duty to "*uphold maintain and repair the palace.....*" and to maintain the Park and other lands as an open space in order to make them "*available for the free use and recreation of the public for ever*". My view is that the Council as trustee was under a duty under section 17 of the 1900 Act substantially to reinstate the fire-damaged Palace and its decision to enter into the contract with Taylor Woodrow Management Contracting Limited was within its statutory powers as trustee. My conclusion that section 17 of the 1900 Act imposes a duty as opposed to a power, arises primarily out of the use of the express word "shall" (see paragraph 15 above). In my view, the word "shall" has the effect of imposing mandatory obligations: see for example, *Grunwick Processing Laboratories Ltd v ACAS* [1978] AC 655, 690 per Lord Diplock. I have in addition noted the juxtaposition of the words "shall" and "may" in the same section, thereby emphasising the mandatory nature of the former.
- 38 Under general principles of trust law, the Council as trustee is entitled to seek an indemnity from Trust funds for any expenditure it has reasonably and properly incurred in carrying out those duties. In my view, where the Trust funds are insufficient to indemnify the Council, unless and until its statutory duties are modified or discharged the Council remains under an obligation to carry out its statutory duties and, insofar as the Trust funds are insufficient, the expenditure incurred in carrying out those statutory duties must be borne by the Council and met by local taxpayers.
- 39 It became evident during the financial year 1987/88 that a considerable overspend on the rebuilding works was likely, estimated by PMI in its report as being in the order of £26m. In the same year, the Trust's funds became exhausted.
- 40 Insofar as expenditure, including the overspend, was incurred by the Council in carrying out its statutory duties as trustee of the Trust, I consider that the expenditure was *intra vires* the Council and lawful. The Council was under a duty substantially to reinstate the fire-damaged Palace; the fact that the eventual costs of reinstating the Palace greatly exceeded the costs estimated when the contract was entered into does not make unlawful the decision to enter into the contract to restore the Palace. Nor does the fact that any such expenditure may not be recovered from the Trust funds by way of indemnity of itself render that expenditure unlawful.
- 41 However, whilst the Council as trustee is under an obligation to carry out its statutory duties in relation to the Park and Palace whether or not the Trust has sufficient funds to indemnify the Council's expenditure, in my view where Trust funds are exhausted the Council is not entitled to exercise its powers as trustee to incur expenditure over and above that *necessary* for it to perform its *statutory duties* as trustee. It is not entitled to impose the burden of administering the Trust on local taxpayers save insofar as it is required by Parliament to do so.

- 42 The Council as trustee was under a statutory obligation to rebuild the Palace. At the time when the Council as trustee decided the manner in which to rebuild the Palace, the Trust funds available exceeded the planned expenditure. In my view, the Council enjoyed a wide margin of discretion in deciding the way in which the Palace was to be reinstated. It is not for me to substitute my view for that of the Council on how in the circumstances its statutory duty should have been fulfilled.
- 43 I am satisfied that the Council, in deciding to reinstate the Palace, acted lawfully and that those Members and officers responsible for the Council incurring expenditure in reinstating the Palace acted in the belief that the expenditure in question was authorised by law. The Council had received Leading Counsel's advice that it was under an obligation substantially to reinstate the Palace (see the advice of Leonard Bromley QC referred to at paragraph 18 above) and Members and officers were entitled to rely on that advice.
- 44 The Objectors further contend that the decision to rebuild the Palace was unlawful on the basis that it went beyond the terms of section 17 of the 1900 Act (authorising "repair") and that it was more in the nature of a development of the Palace. As stated above, the Council enjoyed a wide margin of discretion in deciding the way in which the Palace was to be reinstated and there is no evidence before me which leads me to conclude that that discretion was exercised unlawfully.
- 45 Insofar as the Council as local authority met the cost of the overspend, the question arises whether, as trustee, it is entitled to an indemnity from the Trust. In its capacity as trustee, the Council is entitled to an indemnity from Trust funds to the extent that it has acted reasonably and properly in incurring expenditure and liabilities on behalf of the Trust.
- 46 The Objectors argue that "*once Trust funds are exhausted, the only effective duty is that under the Open Spaces Act 1906. A local authority which maintains an open space under that Act does so under that duty and has no claim to an indemnity*". Articles 4 and 7 of the Alexandra Park and Palace Order 1966 ("the 1966 Order") (as set out in Schedule 3 to the 1985 Act) provide:
- "4. Without prejudice to the exercise of any other power by the Trustees, the following provisions, that is to say, the Open Spaces Act 1906 (other than section 14 thereof) and sections 52 to 54 of the Public Health Act 1961 and, for the purposes of the said section 54, the provisions therein mentioned of the Public Health Act 1933, shall have effect as if, for the purposes of the park, the Trustees were included among the local authorities to whom the provision in question applies.*
-

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7. *The park shall, subject to the provisions of the Alexandra Park and Palace Acts and Order 1900 to 1985 be held by the Trustees for the purposes of the Open Spaces Act 1906*".

- 47 I accept that the effect of the above articles of the 1966 Order is to confer on the Council as trustee, in relation to the Park (but not the Palace) the said powers and duties conferred as local authorities by the Open Spaces Act 1906 and the other statutory provisions mentioned in that Order. However, it does not follow from this conclusion that "*once Trust Funds are exhausted, the only effective duty is that under the Open Spaces Act 1906*". That submission is contrary to the plain words of the 1985 Act which impose a duty on the Council to maintain the Park *and Palace*: see above.
- 48 In my view, the further submission by the Objectors that the Council as local authority has no claim to an indemnity from Trust funds in view of the provisions of the 1966 Order does not follow from the premise on which it is based and is without merit.
- 49 Insofar as the Council as trustee is subject to duties under the 1900 Act and/or in consequence of the 1966 Order, I am of the view that expenditure reasonably and properly incurred by the Council as trustee but met by the Council as local authority, may lawfully be indemnified by the Trust. The fact the Council as trustee may be authorised or required to incur that expenditure (in relation to the Park) by the Open Spaces Act 1906 is nothing to the point.
- 50 I have considered whether the Council incurred the overspend on the rebuilding reasonably and properly and whether it is therefore entitled to an indemnity from Trust funds. In particular, I have had regard to the PMI report of 3 February 1989 which concluded that the amount of the overspend was significantly increased by the actions of the Council and its officers. The report was highly critical of the Development Team, the Design and Construction Teams and the leadership of the restoration project and regarded its criticisms as "*all significant factors in contributing to the enormous cost overruns*". In these circumstances, I share the *prima facie* view of the Attorney General that the overspend is not indemnifiable (see paragraph 23 above).
- 51 Finally the Objectors allege that the Council had no power to lend money to the Trust to finance the overspend. I agree with this. However, this is not what happened. The Council incurred the expenditure as trustee pursuant to its duty to reinstate the Palace and, once Trust funds had run out, financed that expenditure in its capacity as local authority subject to such rights of indemnity as arise against Trust funds. It is wrong in fact and law to regard this situation as the Council as local authority lending money to itself as trustee.

- 52 It follows from the above paragraphs that, in my view, the contention by the Objectors that the Council had no power to incur the overspend cannot be sustained. I have decided therefore that there are no items of account, referable to the legality of the Council meeting the cost of the overspend, which are "contrary to law" within the meaning of section 17 of the 1998 Act. Accordingly, I decline to uphold this head of objection.

The operating deficits

- 53 The Objectors contend that section 17 of the 1900 Act does not impose a duty on the Council to use its own funds in meeting the cost of the operating deficits but only such funds as are in the Trust. The Council, in its capacity as trustee, is under statutory duties to "*uphold maintain and repair the palace*", to maintain "*the park and other lands as an open space*" and to secure that "*the park palace and other lands shall be available for the free use and recreation of the public forever*" (section 17 of the 1900 Act). I am satisfied that the Council was not only entitled but required, in the discharge of its statutory duties as trustee, to incur expenditure on the Trust's operating costs and deficits incurred in maintaining the Park and Palace (see paragraph 37 above).
- 54 As set out in paragraphs 38 to 40 above, it is my view that the Council as trustee is under an obligation to carry out its statutory duties in relation to the Park and Palace whether or not the Trust has sufficient funds to indemnify the Council's expenditure. However, in so doing, given that the Trust funds are exhausted, the Council is not entitled to exercise its powers as trustee to incur expenditure over and above that necessary for it to perform its statutory duties as trustee. The Council enjoyed a wide margin of discretion in deciding the way in which the Park and Palace was to be maintained. It is not for me to substitute my view for that of the Council's on how this discretion should have been exercised. There is, moreover, no evidence before me which leads me to the view that the Council has incurred greater expenditure by way of operating costs than was necessary to discharge its statutory duties. The Council recognises its responsibilities and is maintaining the Park and Palace at a minimum level. In my view, therefore, the Council, as local authority, was authorised, indeed required, to meet the costs of the operating deficits for the years of account under objection. In my opinion, the Attorney General's view, as set out in the letter of 1 May 1996, with regard to the extent of entitlement to indemnity from Trust funds, is *prima facie* correct (see paragraph 26 above).

Appendix

- 55 In the circumstances, I am of the view that the contention by the Objectors that the Council had no power to incur the operating deficits cannot be sustained and there are no items of account in the Council accounts for the years under investigation, referable to the Council meeting the cost of the operating deficits, which are "contrary to law" within the meaning of section 17 of the 1998 Act. Accordingly, I decline to uphold this head of objection.

Treatment of overspend and operating deficits in the accounts

The Council's accounts

- 56 I consider here the question of the treatment in the Council's accounts of the overspend and operating deficits. At the date of the objections, these amounts were classified as "short term debts" in the Council's accounts. This has been of particular concern to the Objectors on the basis that, they say, this falsifies the real financial position and may lead at some point in the future to the Council seeking to make recovery from the Trust. However, in my view, the treatment of the relevant sums in the accounts cannot and does not have any bearing on the Council's ability in law to seek to recover the monies from the Trust at any stage. The right to an indemnity and the enforceability of that indemnity cannot be affected by the way in which the relevant sums are treated in the accounts of either the Council or the Trust.
- 57 Since the objections were made, the Council has amended its statements of accounts (for both financial years to which the objections relate) to identify separately, the so-called "indemnified sum" and "non-indemnified sum". The indemnified sum consists of the amounts accepted by the Attorney General as subject to an indemnity from the Trust. As set out at paragraph 26 above, these consist of first, the operating deficits for the years 1991/92 to 1994/95 (with interest) and second, the operating deficit for 1995/96 (with interest), for which the Attorney General has agreed in principle the Council will be entitled to an indemnity if able to show that it incurred its expenses as trustee reasonably and properly. The non-indemnified sum is the remainder of the expenditure incurred by the Council on the Park and Palace. That sum consists therefore of the sums which are not accepted by the Attorney General as subject to an indemnity, that is, the overspend (with interest) and the operating deficits prior to 1991/2 (with interest).

- 58 Both the indemnified sum and the non-indemnified sum are now classified in the Council's accounts as "long term debtors". The Explanatory Foreword to the 1995/6 Accounts states:

"During 1996/7 The Attorney General ruled that the Council was only entitled to such indemnification for sums expended for the Trust in respect of certain revenue deficits. The Council subsequently agreed not to pursue the capital element of sums expended. As a result the 1996/7 accounts were restated along with the accounts for all other years which were still open. The accounts for 1994/95 and 1995/96 have therefore been restated to reflect the following significant areas of change:

A reflection of the write-down of fixed assets to a nil value in the 1994/95 accounts.

An amendment of the liability in the Trust's accounts to reflect the indemnification amount due as agreed by the Attorney General.....The categorisation of the Trust's debt as a long term debtor in the Council's accounts and recognition of the indemnified sum in the 1994/95 accounts".

The accounts for the financial year 1994/95 contain a similar paragraph. In my view, when read with the above foreword to the accounts and the accompanying explanatory notes setting out the background to the relevant entries, the accounts present fairly the financial position of the Council.

- 59 The Council has, in my opinion, made adequate provision in the accounts for the possibility that it may not recover the indemnified sum. With regard to the non-indemnified sum, the Council's position is that it is not seeking recovery from Trust funds.
- 60 In the accounts under consideration, the non-indemnified sum was not charged to revenue. I am of the view that the revenue and capital finance regime as set out in Part IV of the Local Government and Housing Act 1989 ("the 1989 Act") requires the Council to make full provision immediately a liability is recognised. It does not allow the Council in these circumstances to defer expenditure (within the extended definition given by section 41(3) of that Act) beyond the year in which it was incurred without the necessary authority not to charge an item to the revenue account. The Council did not, in my view, have the requisite authority.
- 61 The Council proposes to finance the non-indemnified sum over 10 years and based on an annuity for that period has calculated it should set aside £7.7m per annum on a constant basis for this purpose (see the minutes of the special meeting of the Policy and Resources Committee on 12 October 1998).

- 62 At the Council's request, the Secretary of State has issued a direction under section 40(6) of the 1989 Act increasing the Council's Aggregate Credit Limit for the last quarter of 1996/97 and the whole of the financial year 1997/98. This, the Council claims, avoids the need for the full sum to be regarded as a current revenue liability and will allow for the monies to be written-off at some future date if and when the decision is taken not to pursue recovery from the Trust. However, a direction issued under section 40(6) of the 1989 Act does not and cannot have this effect.
- 63 For the reason given at paragraph 60 above, it appears to me that the items of account with regard to the non-indemnified sum recorded in the Balance Sheet at 31 March 1995 as £41m and 31 March 1996 as £46m are "contrary to law" within the meaning of the phrase in section 17 of the 1998 Act. I am required therefore to consider whether to exercise my discretion under section 17 of the 1998 Act and make an application to the Court for a declaration to that effect.
- 64 In considering this matter, I have taken account of the fact that the Council are taking steps, over a period of 10 years, to remedy the unlawfulness in its accounts and I have had regard to the potentially detrimental effect on the Council's finances and services were the whole sum to be charged to revenue in a single year. An application to the Court would involve substantial expenditure, the costs of which would be likely to fall on local taxpayers. Moreover, as the items of account are "contrary to law" not because they record unlawful expenditure but because they record expenditure charged to the wrong year of account, the Court could not order any person to repay any amount to the Council (see *R v Dolby (No. 1)* [1892] 2 QB 301). In these circumstances, any application to the Court would be without compensating benefit for local taxpayers.
- 65 I have accordingly, in the exercise of my discretion, decided against applying to the Court for a declaration under section 17 of the 1998 Act. I decline to uphold the objection insofar as it invites me to make an application to the Court in respect of the treatment of the overspend and operating deficits in the Council's accounts.

The Trust's accounts

- 66 The Objectors have complained that the treatment of the sums attributable to the overspend and operating deficits in the Trust's accounts falsifies the real financial position. I have set out above the Council's entitlement to reimbursement from the Trust in respect of money that it has expended on the Trust's behalf. At the date of the objections, the Trust's accounts classified the total of the sums objected to as a liability to the Council. As a result of the objections however, the Council has amended the Trust's accounts to remove the "overdraft" item and to show only the indemnified sum as a liability. The explanatory notes to the accounts for the year 1995/96 state that:

"During 1996/7 the Attorney General ruled that the Council was only entitled to an indemnification for sums expended for the Trust in respect of certain revenue deficits. The Council subsequently agreed not to pursue the capital element of sums expended. As a result the 1996/97 accounts were restated along with the accounts for 1994/95 and 1995/96 which were still open.

In 1994/95 a liability was created in respect of amounts due in accordance with the decision of the Attorney General".

The notes to the accounts for the financial year 1994/95 contain similar paragraphs. In my view, when read with the Explanatory Foreword to the accounts (see paragraph 58) and the accompanying explanatory notes setting out the background to the relevant entries, the accounts present fairly the financial position of the Trust.

- 67 In my view, the treatment of the relevant sums in the Trust's accounts, as amended, does not give rise to any item of account which is "contrary to law". Accordingly, I decline to uphold the objection insofar as it invites me to make an application to the Court in respect of the treatment of the overspend and operating deficits in the Trust's accounts.

Interest

- 68 Finally on the question of the treatment of the relevant sums in the accounts, I have considered whether interest should have been added to the overspend and operating deficits.
- 69 With regard to the non-indemnified sum, as the Council as local authority is not entitled to an indemnity from the Trust, I agree with the Objectors that there is no debt on which interest could accrue. In substance, this position has been accepted by the Council which has decided not to pursue recovery of the overspend (including interest thereon), a matter which is expressly recognised in both sets of accounts. With regard to the indemnified sum, I accept the Attorney-General's view, as set out in his letter of 1 May 1996, that *"the Council are entitled to recover the actual borrowing costs of expenditure properly incurred on the charity's behalf"*. Interest representing such borrowing costs is therefore due on the indemnified sum.

Section 18 of the 1998 Act

- 70 The Objectors have alleged that John Pirrie, the Council's Chief Financial Officer, Toby Harris, Leader of the Council and Gurbux Singh, Chief Executive are guilty of wilful misconduct. I am invited to certify the sums expended by the Council on the Park and Palace from 1990 as due from those persons. The Objectors have stated that those persons "*must always have been aware of the opinion of Elias QC and Pitt-Payne dated 4 November 1990....that the Council did not have powers to subsidise the Trust*".
- 71 At paragraphs 11 to 13 above, I set out section 18 of the 1998 Act and the test for "wilful misconduct".
- 72 The involvement of the three named individuals in the affairs of the Park and Palace arose out of their senior positions within the Council. John Pirrie was the Council's Chief Financial Officer (the officer responsible for the administration of the Council's financial affairs under section 151 of the Local Government Act 1972) from 1987 to 1996. Toby Harris was the Leader of the Council from autumn 1987 to April 1999. Gurbux Singh has been Chief Executive, the Head of Paid Service and the Council's Monitoring Officer from 1989.
- 73 As stated above, I am of the view that the Council is under a duty to maintain and repair the Park and Palace and as such was and is empowered to incur expenditure for those purposes. As such, I consider that as the Council was under a duty to "*subsidise the Trust*" there was no misconduct as alleged. I note, in any event, that the Council went to considerable lengths to obtain legal advice on its powers and duties as a trustee. It had before it a substantial body of Counsel's opinion and I am satisfied that the Council was endeavouring to fulfil its statutory duties in a responsible and lawful manner. The opinion referred to above from Patrick Elias QC and Timothy Pitt-Payne was, in my view, focused on employment issues and not the powers and duties of the trustee under section 17 of the 1990 Act. The suggestion that the Council had no power to subsidise the Trust was not the subject of analysis and was tangential to the opinion itself.
- 74 There is no evidence before me that any acts or omissions of John Pirrie, Toby Harris or Gurbux Singh with regard to expenditure on the Park and Palace after 1990 amounted to wilful misconduct. Accordingly, I have no duty to perform under section 18 of the 1998 Act with regard to the said expenditure.

Particular items of expenditure and the question of delegated authority

- 75 The Objectors have drawn my attention to a number of items of other expenditure connected with the development of the Park and Palace. The essential objection is that expenditure on these items was not properly authorised. In this regard, the general rule is that all expenditure must either be authorised by the Council itself or by Committees, Sub-Committees or officers under powers delegated to them pursuant to section 101 of the Local Government Act 1972.
- 76 The Objectors have complained that approximately £100,000 of Trust monies was spent between 1994 and 1996 on consultants in the preparation of a bid for Central Government funds for the Millennium. In addition, they object to the expenses for a visit to the Conservative Party Conference by the Chair of the Board of Trustees, former Councillor Derek Wyatt, in connection with the Millennium bid. They claim that these monies were not *"legally and properly incurred"*. I am invited to take action under section 19 of the 1982 Act (now section 17 of the 1998 Act) on the basis that the expenditure is "contrary to law" and under section 20 of the 1982 Act (now section 18 of the 1998 Act) on account of the alleged wilful misconduct of former Councillor Derek Wyatt.
- 77 In the financial year 1994/95, the Trust made a payment of £5,000 to a consultant *"for service rendered in identifying and introducing potential investors in Alexandra Palace"*. Her fee was authorised by the former Chief Financial Officer, John Pirrie. The Objectors allege that the payment was incorrectly authorised. It is claimed that this sum is therefore due under section 20 of the 1982 Act (now section 18 of the 1998 Act) from John Pirrie.
- 78 The Objectors have specifically drawn my attention to a letter dated 4 December 1991 from the Treasury Solicitor, on behalf of the Attorney General. This stated that:
- "The Attorney General does not believe that it is possible for the Council as Trustee to make a proper and informed decision about the long-term future of the Park and Palace without knowing the approximate amount of the overspend for which the Charity is liable....."*
- The Attorney General is particularly concerned that no irrevocable commitment is entered into at this stage, while the financial position of the Charity is so uncertain."*

- 79 In June 1993, the Trust's Board resolved to pursue Millennium lottery funds and authorised expenditure of up to £5,000 *"for investigating the possibility for a bid"*. In July 1994, without making reference to any actual figures, the Board took the view that the necessary expertise was not available in-house and resolved to engage consultants to assist with the bid. Over the next year work was undertaken by a number of consultants who were paid approximately £100,000 for their services. The expenditure was purportedly authorised by the former General Manager, Charles Gorman, under delegated powers.
- 80 A report to the Board, at the December 1994 meeting, from the Trust's Solicitors, advised against expenditure on future projects, (specifically those which were the subject of the proposed Millennium bid), before resolution of the "debt issue". The Trust's Solicitors said that *"it is impossible for the Board to make any proper and informed decisions about the Charity's long term future"*. They drew attention to the advice of the Attorney General (see paragraph 78 above).
- 81 In October 1994 former Councillor Wyatt, the Chairman of the Board and a Labour Councillor, attended the Conservative Party Conference with the purpose of furthering the bid for Millennium lottery funds. The expenses for the visit, which came to £317, were purportedly authorised by the then General Manager of the Trust.
- 82 In the event, the bid for Millennium funds was unsuccessful.

Section 17 of the 1998 Act

- 83 The Council has responded (on its own and John Pirrie's behalf) to this part of the objection by stating that the expenditure on the bid for Millennium lottery funds, on the attendance at the Party Conference and on consultant's services were for the purpose of finding external resources to be put towards the development of the Park and Palace. Former Councillor Wyatt has told me that his expenses in attending the Party Conference were also for this purpose.
- 84 I consider that it was within the Council's powers, as trustee, to promote development of the Park and Palace and to incur associated expenses. In this regard I have had regard to the fact that the Council as trustee has the duty to *"uphold, maintain and repair the Palace"* and to maintain the Park and other lands as an open space in order to make them *"available for the free use and recreation of the public for ever"* and to *"generally do any act or thing which may in the judgment of the Trustees appear calculated to promote the use and enjoyment of the park and palace by the public"* (see section 17 of the 1900 Act).

- 85 I have had regard to the advice from the Attorney General to which the Objectors draw attention. I note, however, that this advice was against entering into "irrecoverable commitments" in relation to the long term future of the Park and Palace while the financial position of the Trust was uncertain. The Attorney General does not advise against incurring revenue expenditure for the purpose of finding external resources to be put towards the development of the Park and Palace. I have also had regard to the advice of the Trust's Solicitors against the Trust proceeding with any projects before settlement of the "debt issue". Express reference is made to the Solicitors' advice in the minutes of the December 1994 Board meeting indicating that it had taken the advice (and thereby the Attorney General's views) into account before deciding to proceed. The minutes state that "*further expenditure*" was needed on the bid.
- 86 The Council as trustee enjoyed a wide margin of discretion in deciding how to exercise its discretionary powers and the manner in which its statutory duties were to be discharged. As stated above, I am of the view that it was within the Council's powers as trustee, to promote development of the Park and Palace and to incur associated expenses. As such, I am of the view that the Council was entitled as trustee to decide to incur the expenditure on the Millennium bid, the Conservative Party visit and a consultant's services. The question which then arises is whether the decisions actually taken to incur the expenditure were properly authorised. The relevant decisions were taken variously by the Board, the then General Manager of the Trust, Charles Gorman, and the Council's Chief Financial Officer, John Pirrie.
- 87 The Council has been unable to provide me with documentary evidence that the Board had delegated authority to incur expenditure on the Council's behalf. The documents entitled "Scheme of Delegation and Terms of Reference" for the years of objection fail to designate the Board as a Committee of the Council and to make specific provision for the delegation of the Council's powers as trustee to the Board. The Council contends that the Council can be said to have authorised Board expenditure by approving the yearly budgets. However, both budgetary and delegated authority were required. Budgetary authority is required in respect of Council expenditure irrespective of whether or not authority to incur that expenditure is delegated. A decision to approve a budget is not the same as authorising expenditure within an approved budget head. As such, the budgetary approval given by the Council does not amount to the necessary delegated authority for the expenditure in question. It follows that the expenditure purportedly authorised by the Board was "contrary to law" within the meaning of the phrase in section 17 of the 1998 Act.

- 88 A significant proportion of Trust expenditure in the years of account under objection was purportedly authorised by Charles Gorman, the former General Manager of the Trust, including the expenditure on the Conservative Party visit and the majority of the expenditure on consultants for the Millennium bid. The Council has been unable to provide any documentary evidence which establishes that delegated authority was conferred on Trust officers to authorise expenditure on the Park and Palace. The Schemes of Delegation are silent on this point. I am told by the former General Manager that he understood his authority to derive from the fact that there was a marketing budget approved by the Board and subsequently the Council, which he believed he had authority to spend. As stated above, budgetary authority (even if the Board had the required authority to approve this) does not amount to authorisation to incur particular expenditure. The former General Manager did not have the necessary delegated authority to do this and as such the expenditure in question was "contrary to law" within the meaning of the phrase in section 17 of the 1998 Act.
- 89 I have considered whether John Pirrie, the then Chief Financial Officer, had the authority to incur expenditure on the Trust, including that spent on a consultant's services. The Council has told me that his authority derived from the fact that the expenditure was "*a legitimate charge to the marketing budget*". For the reasons given at paragraph 87 above budgetary authority (even if properly given) did not suffice to provide John Pirrie with the requisite authority.
- 90 I have accordingly to decide whether or not to make an application to the Court under section 17 of the 1998 Act. In this regard I have taken into account the fact that the Scheme of Delegation for 1988/89 did properly designate the Board as a Committee thereby attracting the requisite delegated power to authorise expenditure on the Trust (see Part 1 of that document). There is nothing to suggest that the changed wording of the Scheme from that in force in 1988/89 to that in force in 1989/90 and subsequent financial years (in which the delegation was not properly effected), was anything other than an oversight. In the circumstances, I am satisfied that the decisions by the Board members to incur expenditure on the Park and Palace were taken in the belief that they were authorised by law.

Appendix

- 91 With regard to the expenditure purportedly authorised by John Pirrie and the former General Manager of the Trust, I am of the view that John Pirrie, as the officer responsible for the proper administration of the Council's financial affairs, should have put in place effective arrangements to ensure that only properly authorised expenditure was incurred. The former General Manager was also at fault for not checking that he had the requisite authority. However, it appears to have been a wide-spread (albeit erroneous) belief that budgetary authority sufficed to give officers the delegated authority to incur expenditure. I am not persuaded that the individuals concerned (including former Councillor Wyatt) acted otherwise than in the belief that the necessary arrangements for delegated authority were in place and therefore that the expenditure was authorised by law.
- 92 In these circumstances, I consider it unlikely that a Court would order any person to repay any of the unlawful (unauthorised) expenditure and therefore that no useful purpose would be served in applying to Court under section 17 of the 1998 Act. I have accordingly, in the exercise of my discretion, decided against applying to Court for a declaration and decline to uphold the objection insofar as it invites me to make such an application in respect of particular items of Trust expenditure on the Park and Palace, in the Trust's accounts.

Section 18 of the 1998 Act

- 93 The Objectors have alleged that John Pirrie and former Councillor Wyatt are both guilty of wilful misconduct with regard to expenditure associated with the development of the Park and Palace. As stated above, it is my view that the Council's efforts as trustee to promote development of the Park and Palace and to incur associated expenditure were within its powers. I am satisfied that the actions of both individuals were for the purpose of obtaining external resources for the development of the Park and Palace and were as such for a lawful purpose.
- 94 In my view, John Pirrie as the officer responsible for the proper administration of the Council's financial affairs, should have put in place effective arrangements to ensure that only properly authorised expenditure was incurred. I am also critical of former Councillor Wyatt, as Chairman of the Board, in this regard. I accept, however, that both individuals were unaware of the lack of delegated power. As noted at paragraph 12 above, negligence and/or lack of judgment fall short of wilful misconduct. I therefore do not consider there to have been any wilful misconduct by either John Pirrie or former Councillor Wyatt with regard to the matters raised by the Objectors. I have no duty to perform under section 18 of the 1998 Act. Accordingly, I dismiss the section 18 objection insofar as it invites me to certify a sum as due from the two above named individuals on account of their alleged wilful misconduct.

- 95 I am concerned however at the apparent lack of financial control over both delegated authority to incur expenditure and in particular the overall amounts spent on development of the Park and Palace. I have not been given a satisfactory explanation for why the expenditure on the Millennium bid, authorised by the Board at a level of £5,000, in the event went as high as £100,000. Due to a lack of documentary evidence I have not been able to ascertain why the proposed increase in expenditure, way beyond that originally agreed at Board level, was not expressly referred to the Board for approval (save in relation to a further £5000 for a proposed aerial cableway system). Responsibility for the systems for financial control and delegated authority lies primarily with the Board and the then section 151 officer, John Pirrie. These are matters which I intend to address in the forthcoming public interest report under section 8 of the 1998 Act (see below).

PUBLIC INTEREST REPORT

- 96 I have decided to uphold the objections inviting me to issue a public interest report into the subject matter and outcome of these objections. A draft report is in the course of preparation.

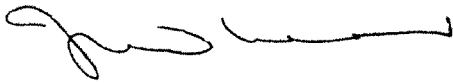
CONCLUSION

- 97 I have carefully considered all of the evidence before me, whether or not specifically referred to in this statement of reasons.
- 98 In my view, there are items of account which are "contrary to law" (within the meaning of the phrase in section 17 of the 1998 Act) in the Council's and the Trust's accounts. These relate to:
- (a) the treatment of the overspend and operating deficits in the accounts (see paragraphs 60 to 65)
 - (b) the arrangements for the delegation of authority for the authorisation of Trust expenditure (see paragraphs 87 to 92).

I have however decided, in the exercise my discretion, not to make an application to the Court. I have in addition concluded that I have no duty to perform under section 18 of the 1998 Act in respect of any of the matters raised by the Objectors.

- 99 I have decided to uphold the objections insofar as they invite me to issue a report in the public interest under section 8 of the 1998 Act.

100 This document constitutes my statement of reasons for my decision. The Objectors have a right of appeal to the Court against my decisions not to uphold their objections insofar as they invite me to take action under sections 17 and/or 18 of the 1998 Act. The enclosed form AF74 gives guidance as to the appeals procedure.



J McWhirr

District Auditor

1 September 1999

ALEXANDRA PARK AND PALACE CHARITABLE TRUST

18. Provision

	Group 2008 £	Group 2007 £	Trust 2008 £	Trust 2007 £
Haringey Council: Indemnification	37,363,918	34,574,233	37,363,918	34,574,233
Reconciliation of movement:				
Balance brought forward	34,574,233	33,022,439	34,574,233	33,022,439
Amount charged to SOFA	444,292	329,466	444,292	329,466
Transfer to bank less VAT debtor	2,345,393	1,222,328	2,345,393	1,222,328
Balance carried forward	37,363,918	34,574,233	37,363,918	34,574,233

The relationship between the Trust and the London Borough of Haringey:

The Council of the London Borough of Haringey is Trustee of the Trust. The Council delegates the entire function of trustee to the Alexandra Park and Palace Board. The Council elects individual members to sit on the Alexandra Park and Palace Board to act as the charity trustees. The charity trustees are those persons having the general control and management of the administration of the Trust. All employees of the Trust are employees of Haringey Council as trustee and are included in the Council's pension arrangements.

Due to the nature of the relationship between the Trust and Haringey Council there are a number of significant related party transactions. These amounts are consolidated into the Trust's financial statements. However, due to the unique nature and structure of the relationship it is thought appropriate to disclose these items: central administration of £Nil (2007: £30,000); entertainment licences of £43,419 (2007: £46,104); public liability insurance £36,303 (2007: £34,574); provision of park patrol service £34,460 (2007: £33,620); legal expense £977 (2007: £1,625); printing and other sundry items of £2,250 (2007: £3,654).

Alexandra Park and Palace Charitable Trust is a going concern due to the ongoing support of the corporate Trustee, London Borough of Haringey. It is the Council's current policy to continue providing this support until such time as it is no longer required. The deficits incurred each year form part of the provision due to Haringey Council and are shown as a creditor on the balance sheet.

The analysis of the current year's figure is as follows:

	Accumulated Balances £'000	Interest £'000	Total £'000
Indemnification 1991/92 to 1994/95 (1)	5,005	9,881	14,886
Indemnification 1995/96 to 2007/08 (2)	14,228	4,854	19,082
Provision: 1988/99 to 1990/91 (3)	755	2,641	3,396
	19,988	17,376	37,364

ALEXANDRA PARK AND PALACE CHARITABLE TRUST

18. Provision (continued)

1. This is the amount which the Attorney General has agreed that Haringey Council is entitled to, in respect of expenditure incurred from operational deficits in the financial years 1991/92 to 1994/95.
2. This is the amount relating to the operational deficits for 1995/96 to 2007/08 which the Attorney General has agreed in principle that Haringey Council is entitled to. The final value has yet to be formally agreed. (The operational deficit is calculated as the deficit for the year before interest and the increase in working capital in the year).
3. Haringey Council may also be entitled to indemnification for the operational deficits from 1988/89 to 1990/91, so this amount has also been provided for.

Comments of the London Borough of Haringey Chief Financial Officer:

Gerald Almeroth LBH CFO has been supplied a copy of this report and provided the following comment:

'The facts in the report in terms of the figures and timescales are correct. The treatment of the liabilities in the AP accounts are as agreed by the Attorney General, district auditor and the charity's auditors. The council would consider this position if such a request is made'

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