

264

(264)

APPENDIX 22

TASCO

Alexandra Palace and Park Board**24th April 2007****Agenda Item 8****Managing the Transfer**

The Board has been advised that the Order from the Charity Commission has been agreed in principle and the reasons will be further considered on Friday 27th April 2007. However there may be a delay in the formal legal completion.

It is now some 12 months beyond the date that Firoka had stated in their October 2005 submission and had hoped the transfer would be completed. That delay has and will continue to have detrimental effect on continuing business. Further the business plan on which the concept was developed is now 18 months old and the construction costs are rising on a monthly basis faster than the rate of general inflation. Generally staff morale has also suffered caused by the uncertainty in the intervening period.

In these circumstances it would appear that a measured and phased approach will be necessary to the transfer of the business and the staff whilst maintaining the terms of the lease, project agreement, employment and pensions agreement and the umbrella master agreement.

The Board agreement to begin the phased transfer process once the Order has been confirmed on Friday 27th April is sought.

A number of measures can be implemented in advance of legal completion which will smooth the path for other sequential actions to take place. The contracts for events under signature but not yet delivered for the next month can be novated in Firoka's favour. Further Firoka can assume the terms of the APTL licence. In addition a management arrangement for the operation of the ice rink can be concluded. The staff can be seconded for the interim period during which effect can be given to the formal arrangements to ensure continuity of employment and length of service. None of these actions will be irrevocable but will assist in a smoother transfer.

The Directors of the charity's wholly-owned subsidiary, Alexandra Palace Trading Ltd., require to be similarly advised to enable appropriate action to be taken on their behalf.

Resolved:

That the General Manager, after taking appropriate legal advice, be authorised to begin the process of a phased transfer of the charity business, staff and contracts to the Firoka Group following the grant of the Order. Further, to advise the directors of the wholly owned trading company that the premises will shortly not be available for their use and similar action on the phasing of action prior to formal transfer will be necessary on their behalf.

265
265

**MINUTES OF THE ALEXANDRA PALACE AND PARK BOARD
TUESDAY, 24 APRIL 2007**

APBO08. FUTURE OF THE ASSET - PROGRESS/UPDATE

The General Manager, in a brief introduction of the TABLED update, advised that the Order from the Charity Commission had been agreed in principle and the reasons would be formulated by the Commissioners at a further meeting on Friday 27th April 2007. Once the reasons had been finalised they would be communicated and then or shortly thereafter the Order would be sealed. The Trust Solicitor advised that the sealing of the order and its issue would be matters for officers of the Commission to progress. However there may be a delay, hopefully only short, in the formal legal completion.

Mr Holder advised that it was now some 12 months beyond the originally proposed completion date that Firoka had anticipated in their October 2005 concept submission. The delay had and would continue to have detrimental effect on the continuing business of the charity's trading company with consequential effects on profit generation. The business plan on which the Firoka concept was developed was now 18 months old and the construction costs were rising on a monthly basis faster than the rate of general inflation. Mr Holder also commented on the morale of staff which in general terms had also suffered, caused by the uncertainty in the intervening period. In these circumstances it would appear that a measured and phased approach would be necessary to the successful transfer of the business and the staff whilst maintaining the terms of the lease, project agreement, employment and pensions agreement and the umbrella master agreement.

With respect to the issue surrounding the CUFOS building the Trust Solicitor stated that the Firoka Group had agreed to grant the security of Tenure the CUFOS trustees were seeking. It was now a matter for CUFOS to formally consider and accept or reject the offer to abrogate the 'contracted out' term.

The Board was being asked for its agreement to begin the phased transfer process once the Order was confirmed on Friday 27th April 2007.

(Councillor Thompson arrived at 19:10hrs)

Mr Holder further advised that a number of measures would be implemented in advance of legal completion which would smooth the path for other sequential actions to take place. The contracts for events under signature but not yet delivered for the next month could be novated in Firoka's favour. Further Firoka could assume the terms of the APTL licence. In addition a management arrangement for the operation of the ice rink could be concluded. It would be appropriate for staff to be seconded for the interim period during which effect can be given to the formal arrangements to ensure continuity of employment and length of service. None of these actions would be irrevocable but will assist in a smoother transfer. The Directors of the charity's wholly-owned subsidiary, Alexandra Palace Trading Ltd., did require to be similarly advised to enable appropriate action to be taken on their behalf.

266

(266)

**MINUTES OF THE ALEXANDRA PALACE AND PARK BOARD
TUESDAY, 24 APRIL 2007**

RESOLVED

- i. That the General Manager, after taking appropriate legal advice, be authorised to begin the process of a phased transfer of the charity business, staff and contracts to the Firoka Group following the approval of the lease; and
- ii. That the General Manager be authorised to advise the directors of the wholly owned trading company that the premises will shortly not be available for their use and similar action on the phasing of action prior to formal transfer will be necessary on their behalf.

267

267

APPENDIX 23

-----Original Message-----

From: StHilaire Dianna

Sent: 05 October 2009 10:43

To: Cllr Adje Charles

Cc: Suddaby John

Subject: Re: Notification of decision of Standards Committee Assessment Sub Committee

Importance: High

Sensitivity: Confidential

Dear Cllr Adje

On Thursday 1st October 2009, the Standards Assessment Sub-Committee considered a complaint from Clive Carter concerning the alleged conduct of Councillor Charles Adje, a member of Haringey Council. The sub-committee also considered the two reports written by Martin Walklate following his investigations into the same matters as referred to in the complaint. The sub-committee also took into account that there remained unanswered questions on this matter of great significance for the borough and on the basis that it considered there were sufficient grounds to show that the alleged conduct, if proven, could amount to a failure to comply with the Members' Code of Conduct, decided that the complaint should be investigated by the Monitoring Officer.

John will keep you informed in due course about the results of the investigation.

Kind regards,

Dianna St Hilaire

PA to Head of Legal Services & Monitoring Officer Haringey Council
Chief Executive's Office

Tel: 020 8489 5934

Email: dianna.sthilaire@haringey.gov.uk

ANALYSIS OF RESPONSES TO THE DRAFT REPORT CONSULTATION

It is a prescribed element of the code of conduct investigation process that the draft report is circulated to both the complainant and the Subject Member. Accordingly, the draft report and associated appendices were dispatched to these individuals on 11th August 2010 with responses required by 31st August 2010. Both the complainant, Mr. Carter and the subject Member, Councillor Charles Adje, responded within this time frame.

Mr. Keith Holder

Additionally, and with the specific agreement of the Monitoring Officer, a redacted version of the report was sent to Mr. Keith Holder to offer him the opportunity to see the context that his evidence was contained within. He was offered the same timeframe and conditions as prescribed to the two formal recipients. He responded (letter dated 25th August, received 27th August) by asking for additional time in order that he may consult his legal advisors and requesting that the Council meet the cost of that advice.

Mr. Holder is not the subject of this investigation and, whilst a major contributor to the evidence considered within the report, is not a recognised party. The majority of his contributions figure in previous reports where he has had the opportunity to comment either at the time or subsequently. The majority of the testimony which he may consider presents him in a poor light has been the subject of other consultations with him (for example he was offered the opportunity to comment on Councillor Adje's interview notes) and he has either accepted or declined these opportunities. All his correspondence is reproduced in full in the appendices.

His own involvement has been the cause of much of the delay to this process and further delay is not seen as helpful to either the investigation, the resolution of the complaint or the stress that these investigations may bring to many of the involved parties. Accordingly, I have denied his opportunity for further time to respond and, on the instruction of the Monitoring Officer's representative, have denied any consideration of meeting his legal costs. He has, however, been advised that any further submissions or evidence from him would only be considered by a Standards Committee/Panel if its Members considered that this was relevant to the issues before them.

Mr. Clive Carter

Mr. Carter has submitted an extensive submission which is attached in full at the appendix. Mr. Carter's opportunity to comment on the draft report is purely on matters of factual inaccuracy. His response extends well beyond this point often utilising comment in the report to expansively develop opinions and alternative views. Many of his views fail to recognise the constraints of an investigation under the Code of Conduct and extend into matters where he feels Councillor Adje has failed more generally. It is also important to note that he often uses

comments in quotation which are not, in fact, quotes contained anywhere within the report.

I do feel that it is important to respond to his comments where appropriate.

Mr. Carter's status

He makes one reference to an issue of fact which relates to his position on the APTC Board. This has been corrected in the main report.

Powers of the investigator

Mr. Carter has made it clear on a number of occasions that the investigation would benefit from an investigator with powers of seizure, investigation and interview under caution. He makes reference to the power to seize bank statements.

This is not the format of the Code of Conduct investigations and, in my opinion, falls more closely to police investigations of criminal activity. Indeed, the majority of the powers that he implies are necessary would, I believe, require a Magistrate's warrant.

An implication therefore exists that some of the investigation has not been concluded adequately. Whilst Mr. Carter is welcome to hold this opinion, I have to directly contradict his view of the appropriateness of such an investigation in this regard as it is not in keeping with either the spirit or the fact of the code of conduct.

My approach has been to base my investigation on investigation of issues for which a factual basis exists. I have then sought explanation from the Subject Member and then sought confirmation from other available evidence or other witnesses. I believe this is entirely appropriate. Had the investigation at any point indicated criminal activity then I would have ceased investigation and advised the Authority to refer the matter to the Police who are trained and resourced to use such methods. This was not the case with this investigation.

Councillor Adje's cooperation

He takes issue with my comment in the report that Councillor Adje has cooperated fully with my investigation. He extensively comments that Councillor Adje's behaviour throughout the whole licence process and the subsequent investigations has been characterised by dis-ingenuity. My comment on Councillor Adje's behaviour relates to his willingness to respond to questions, his willingness to attend interview and cooperate with the subsequent agreement to the information. He has always been well mannered, polite and respectful. I do not confuse this with the accuracy or otherwise of his testimony.

Mr. Carter also makes the allegation that the report does not give sufficient weight to the factual matrix and the driving forces involved at the time of the licence. I refute this within the context that all the information which is necessary to consider breaches of the code has been accurately and fully collated and reviewed. It is not appropriate in such an investigation to bring in

270

270

extraneous information which is not relevant to the review. I similarly refute any view that the questioning of Councillor Adje should, in regard to the issue of the purposes of the meeting relating to the licence or any benefit to Kassam, have been more robust and precise.

Legal Advisor Files

Mr. Carter makes reference to his perception of the failure to seek the files of the lawyers involved in the development of the licence or the main contract. This information was sought and obtained during the Walklate 1 investigation but is not included in the report because it has no further bearing on any identified breach of the code of conduct.

For the sake of completeness, I should make it clear that the overwhelming impression I received from both legal advisors was that they met, almost exclusively, with Mr. Holder on these matters and had the most minimum contact with Councillor Adje. I should also make it clear that Mr. Holder was asked on many occasions to produce notes of the meeting but was unable to do so.

Issues of omission

Mr. Carter is surprised that Councillor Adje's individual failures to comment on specific questions has, he feels, been overlooked in the report. I am satisfied that I have made it entirely clear that Councillor Adje's comments are inconsistent and vague. I do not feel any need to respond further to his comment. I also wish to make it clear that Mr. Carter's 'thrust' or extrapolations are his own and not shared by me unless stated so within the report.

I remain of the view that Councillor Adje did cooperate with my investigation and I propose to make no change to this comment in the report. I again reiterate that I feel the report properly indicates the inconsistency of information he provided.

Authority to sign the licence

Mr. Carter raises extensively the issue of the signing of the contract and uses this as a platform to consider the Charitable Trustee relationship to this issue. Whilst the issue of Councillor Adje as a Trustee may be a matter that the Charity Commission could consider it is not a matter for this investigation.

Mr. Carter uses my view that the signing of the Contract (licence) was a matter for the responsible officers to raise various issues of governance at the APPT. My view remains unchanged. Before any officer signs any document they must be sure that they have the correct delegated power to do so, that the document is authorised by the Trust and that the action is legally sound. In previous reports I criticise Mr. Loudfoot and Mr. Harrington for signing the document. However, the signing of the document only becomes relevant to this investigation if Councillor Adje had placed pressure on them so to do.

I have no evidence or supported comment to validate that this was the case and I find no record of either of these gentleman raising any such duress with any

other party. I disagree with the suggestion that the contract should only have been signed by trustees when this was not the practice of the Trust and would have been contrary to Council standing orders by which the Trust abides. I have extensively commented on Governance Issues and the continued failure of the Trust to operate within an appropriate governance regime and I do not see any need to add to this at this stage. I make no change to my report accordingly.

Disregarding Advice

Mr. Carter then raises the issue of the interpretation relating to disregarding advice. He raises issues about the legal advice obtained and the constraints of the investigation.

At the appropriate time, I sought advice on the code of conduct and its interpretation and have been provided with that advice which I have applied. That advice is clear. The issue of disregarding advice is not a matter of simply ignoring advice proffered by any council officer in any circumstance but specifically to issues of illegality upon which the Monitoring Officer or the Section 151 officer can comment when pursuant to their statutory duties. This is not appropriate to this investigation and I make no change to my document accordingly.

I again see no reason to make any changes to the thrust of the report in this regard.

Analysis of Mr. Holder's position

Finally, in this section, Mr. Carter sates on page 10 of his commentary that I may be wrong in my analysis that Mr. Holder did not regard his integrity as being compromised. He is entitled to his opinion. I have fully explained my own incredulity of Mr. Holder's 'not at the time' statement and I do not feel any need to change the report further.

Mr. Carter's interview

The final comments I wish to make are related to the various comments made by Mr. Carter in regard to his own interview note. I would wish to place on record that my procedures on such matters are consistent. A non verbatim record of any interview is provided to the interviewee and they are given the opportunity to advise of any inaccuracy and offer additions or changes. Mr. Carter was given this opportunity and was reminded of that opportunity on two occasions and failed to do so. For him to respond at this time and contradict that view is unhelpful.

Other matters

Mr. Carter concludes in the latter nine pages with a series of comments relating to Councillor Adje's assertions as part of his interview. I am not prepared to comment on any of these matters as they are merely records of what Councillor Adje stated.

272 (272)

Conclusion

I conclude by thanking Mr. Carter for his submissions which are fully available for the committee to consider but I only intend to make one change, that relating to his status on the committee, as a result of his submission.

Councillor Charles Adje

In contrast, Councillor Adje's response to the draft report is succinct. He makes no correction in regard to factual inaccuracy and therefore I accordingly make no changes to my report as a result. Councillor Adje utilises the opportunity of consultation to express his disappointment at the conclusions I have reached particularly in regard to my finding of a breach of the code of conduct.

Suppression

Councillor Adje reiterates his previously made point that Keith Holder had opportunities to raise any concerns regarding suppression and did not do so. He also does not accept that he was party to withholding any information from Members of the Trust.

Sharing of material

He challenges my view that the material in the briefing note should have been shared with his Trust colleagues. He refers to common practice that not all officer briefing notes are shared with other Members. I would contend that whilst papers are often produced for Members which consider potential options and are not shared it would be irresponsible if material information relating to a decision was withheld from those who are charged to make that decision. I believe that Mr. Holder's information was highly material and refute Councillor Adje's assertion that had the briefing paper been made known it would have made little difference to the outcome. The paper produced by Mr. Holder is not a consideration of a variety of tactical options but a clear denial of the need to proceed down the course proposed.

Status of Mr. Holder

I have not included the matter of Mr. Holder's status as, at the time of the production of the briefing paper he was General Manager and fully responsible. I do not see the relevance of the advice relating to any duality of role that Mr. Holder may have been considering with regard to Firoka and indeed, had Mr. Holder been acting in a dual capacity he would surely not have produced the briefing note in the way he did.

I do not make any changes to my report as a result of Councillor Adje's submission.

Summary

I believe that I have given every opportunity to the relevant parties to comment on the draft report. The one change occasioned, that of Mr. Carter's status' is not materially significant to the report in any way and I see no need to reissue the report to the concerned parties.

273

273

Martin Walklate
September 1
2010