

Chairs Briefing Note – April 2007**Appendix 1 - attachment****1. This briefing note is compiled following:**

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

2. Can Kassam rescind the agreement ?

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

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

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

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

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

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

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

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

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

3. The current progress on the Order

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

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

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

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

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

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

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

4. What else from the Commission ?

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

5. Is there an Option B for the Trust ?

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

6. Is there an Option B for Kassam ?

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

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

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

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

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

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

7. Summary

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

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

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

16th April 2007

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Main Identity

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

Charles,

The briefing note requested is attached.

Keith

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Message Identity

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

Your message

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

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

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