

Report Title: Agreement on terms of debt with LBH

Report of: **Duncan Wilson, Chief Executive, Alexandra Park and Palace**

1. Purpose

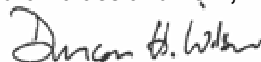
- 1.1 To propose wording for clarification of the terms of the debt from APPCT to the Council accruing from deficit funding since 1988 is circumscribed, to be fair to both parties

2. Recommendations

- 2.1 That the Trustees approve the wording set out below as the basis for further discussion and agreement with the Council

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3. Executive Summary

- 3.1 There have been discussions with the Council on the debt in APPCT's accounts since 2009. Currently APPCT's deficit funding (£2.15m in 2014/2015) is accrued as a long term debt to LBH in APPCT's accounts. Although the likelihood of repayment is small, and LBH write off the debt each year in their own financial statements, the Council has been unwilling to forego the debt in perpetuity, which the Trust would have preferred.
- 3.2 Opinions on the significance of the Trust continuing to carry this amount in its balance sheet are divided. But it would certainly make the matter easier to explain to potential funders if the terms were clearer.
- 3.3 The Attorney General and District Auditor adjudicated on the validity of the debt from 1996 to 1999 and eventually found that the debt was fairly stated except for doubts about the amounts accrued from 1988/89 to 1990/91 (£3.396m out of a total of £48.747m). These were found to some extent to be related to the 1980's refurbishment or its impact, and there was an unresolved question as to whether this was recoverable from the Trust. It is therefore recommended that the proposed form of words circumscribing the debt is stated without prejudice to the recoverability of this element of the total debt.
- 3.4 The proposed wording (para 5 below) is designed to clarify that the debt will only be recovered when both the Trustees and the Council are satisfied that it can be repaid in whole or in part without damaging the Trust's capability of performing its charitable duties – ie to keep the Palace and Park open as places of public recreation, and to safeguard the Trust's assets.
- 3.5 That should be sufficient to reassure donors such as the HLF, and may result in the debt being moved to a Contingent Liability of the Trust in the Notes to the Accounts, which would help presentationally.
- 3.6 The question of whether our funding is treated as a loan for a grant for the future is a separate one, on which briefing will be provided when we know more.

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

N/A

5. Local Government (Access to Information) Act 1985

N/A

6. Recommended wording to be agreed with LBH

- 6.1 "The Trustees of the APPCT ("the Charity") acknowledge that as at 31st March 2014 the total amount advanced by the London Borough of Haringey ("Haringey") and its predecessors to the Charity and not repaid by the charity was stated in the Trust's accounts at £48.747m on a conservative basis.

Haringey and the Charity have agreed that this amount will not be repayable in whole or in part by the Charity unless and until full financial provision has been made for the obligations of the Charity for the foreseeable future. Any assessment of these obligations must be to the satisfaction of both the Charity and Haringey, both parties acting reasonably, before any such repayment is initiated. Should the parties be unable to reach an agreement, the issue to be settled by an independent arbiter, answerable to both the Council and the Trust.

7. Legal Implications

- 7.1 The Trust's solicitors have been consulted in the preparation of this report and advise:

The proposed wording does not fetter the Trustees' discretion as LBH cannot unilaterally determine when the criteria for repayment have been met. If the effect would be to transform a strict legal liability into a contingent liability, that would be in the Charity's interests.

It would be advisable to define what the arbitration process is and what "obligations of the Charity" means, which would include various legal obligations, though this would mean a comprehensive and careful drafting exercise would need to be undertaken and certain formalities attended to, to address the issue of enforceability.

- 7.2 The Council's legal officers have been consulted in the preparation of this report and note that there is no discharge of the debt owed to the Council within this proposal, and that the Council's s151 Officer is content with the arrangements proposed.
- 7.3 It is also noted that in the context of the wording of section 6 above, the 'obligations of the Charity' relate to its charitable obligations i.e. to keep the Palace and Park open as places of public recreation.

8. Financial Implications

- 8.1 The Council's Chief Finance Officer has been consulted in the preparation of this report and stresses that he is content with the wording contained in section 6 above. This does not involve the discharge of the debt owed to the Council and merely reflects agreement on a process for discussion of recovery of the debt. Although the debt is not shown in the Council's accounts, it is not discharged. Enabling the Trust to reassure donors and obtain funds should also be financially advantageous to the Council.

9. Use of Appendices

- 9.1 There are none.