

## PART 2 – CONFIDENTIAL FACTS AND ADVICE

**DD2402**

**Title: GLAP Donation to London Homeless Charity Group**

*Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.*

### **This information is not suitable for publication until the stated date because:**

The information provided in Part 2 contains sensitive information which should be kept confidential as it is considered to be exempt under sections 42(1) (legally Privileged Advice) of the Freedom of Information Act 2000. Disclosure would prejudice the commercial interests of the GLA.

**Date** 03 September 2023

### **Legal adviser recommendation on the grounds for not publishing information at this time:**

The contents of Part 2 include privileged legal advice which relates to the GLAP's interests, the disclosure of which could prejudice those interests.

#### **Public Interest Assessment**

For those reasons it is considered that the information contained in this report and Confidential appendices (two and three) is exempt from publication in reliance upon the exclusions contained in [sections 42(1) (legally Privileged Advice) and] section 43 (2) (Commercial Interests) of the FOI Act 2000 and because the public interest in withholding the information outweighs the public interest in releasing it.

**Legal Adviser** - I make the above recommendations that this information is not suitable for publication at this time.

**Name:** Claire Mason

**Date:**

*Once this form is fully authorised, it should be circulated with Part 1.*

### **Advice:**

TfL Legal have been asked to consider the Leases in place with ExCel and the Royal Docks Management Authority (RoDMA) with a view to understanding what, if anything, the Mayor can do via his land interests in the Royal Docks, to prevent or frustrate DSEI being held in the Royal Docks.

It is worth noting that as Landlord, GLAP is entitled to a proportion of the financial benefit to ExCel and RoDMA under their arrangements for DSEI.

The questions we have been asked to consider are:

- (a) can GLAP as land owner of the Excel Land or the RoDMA land take steps to prevent or frustrate the exhibition taking place; and
- (b) can GLAP as a shareholder in RoDMA require RoDMA to refuse to permit any part of the exhibition taking place in the land and water demised via the RoDMA lease.

## **RoDMA**

RoDMA has a 225-year leasehold interest in GLAP's freehold of the area of water in the Royal Docks. Principally, RoDMA's role is determined in the RoDMA Lease as being the, maintenance and management of the water areas within the Royal Docks.

RoDMA's ability to deal with the demised area under the RoDMA Lease is limited to the provision of the Services (as defined in the fourth Schedule to the Lease) and water activities allowed under the Lease. The RoDMA Lease provides for a Service Charge Area over the land surrounding the water. This area was once owned almost exclusively by GLAP's predecessors but is now held by various landowners.

Each Landowner in this area has a share in RoDMA and becomes an Ordinary Shareholder of RoDMA by virtue of that share each pays a proportion of the ongoing maintenance and management costs of RoDMA's water maintenance obligations. Each shareholder is bound by and obtains the benefit of the Shareholders Agreement. Each Shareholder has voting rights under the Shareholders Agreement in proportion to its landownership and pays that share of the Service Charge.

GLAP hold 40.8% of the Ordinary Shareholder vote and ExCel circa 25%. On Companies House (a publicly accessible information source) GLAP appear alongside ExCel Exhibition Centre Ltd and the Secretary of State for Food and Rural Affairs as 'persons with significant control' of RoDMA.

A Special Share is held by Secretary of State for Environment and Food and Rural Affairs. It is understood that the London Borough of Newham (LBN) has been asked to manage the Special Share on their behalf.

We have undertaken a review of the various RoDMA documents (Lease between GLAP and RoDMA dated 28 September 1990 (as varied), relating to the water areas in the Royal Docks, the Shareholders' Agreement dated 28 September 1990 and Articles of Association adopted 25 September 1990 (varied 26 November 1991)) and the ExCel Documents (Master Building Agreement dated 22 January 1998 (as amended by a Deed of Variation dated 26 March 1999); and the 200 year Lease dated 20 April 2001 between the London Development Agency (now GLAP), Royal Docks Management Authority Limited (RoDMA) and London International Exhibition Centre PLC (ExCel) (as amended by Supplemental Deed dated 7 July 2008)(the "ExCel Lease")

## **RoDMA Lease**

Part of the exhibition will involve the use of the dock water. It is understood that RoDMA licence the whole area within Royal Victoria Dock to ExCel/Clarion Events to facilitate the mooring of 7-8 military vessels, which are part of the DSEI Exhibition.

From a review of the form of licence ("approved licence") which RoDMA use for licencing the dock/moorings, it isn't clear what area is being licenced or how the public access to the area is restricted and or acknowledged, currently but we expect to see a more detailed version in due course.

### Can RoDMA refuse to issue the Licence?

RoDMA is an independent organisation. It is open to RoDMA through its directors to refuse any application to licence the use of the docks. It is understood that there is a business plan (approved by the directors) which assumes licence applications in line with the objectives in that plan are approved.

## Can GLAP direct RoDMA to refuse to grant the licence?

RoDMA is not obliged to seek the consent of GLAP as Landlord to each licence it enters into.

Clause 3(20)(a) of the RoDMA Lease deals with the issue of parting with possession. RoDMA is not to let/licence any part of the demise other than (a) pursuant to a licence in an approved form which is (b) of a period less than 5 years and (c) which grants non-exclusive use.

The licence is an approved form of licence. The period is less than 5 years and the fact that it is a licence suggests it doesn't confer exclusive use. Clause 2 of the standard licence seen says that it does not grant any exclusive rights. However, we have sought clarity as to whether this is accurate.

### Other relevant provisions

Clauses 12(a) and 12(b) of the RoDMA Lease – These are the standard lease type provisions restricting the tenant from causing a nuisance to the Landlord or others and restricting the use of the demise for offensive trade. These are not clauses against which RoDMA has to seek consent. They are simply prohibitions. It is not likely that the exhibition would be a breach of either. In so far as the licence is concerned – RoDMA will be permitting military vessels into the dock and moor at or near Excel. We do not consider this likely to be found to be a nuisance – the docks are designed for ships to sail in and moor up – that's why they were built. Similarly, this use in association with a lawful exhibition at the centre is not a nuisance.

Is it an offensive use? It is unlikely that it is objectively offensive. The trade is lawful, forms a big part of UK economic activity abroad and traders are undertaking a lawful activity. That's not to say that lawful activity can't be offence.

Technically, we believe it is unlikely that the trade would be offensive for the purposes of lease enforcement. i.e. if the exhibition proceeds by licence, GLA might send a section 146 notice, saying there is a breach of the lease and asking to have it restrained but it is doubtful that a court would support an application for an injunction and /or that there would be any prospect of forfeiture of the lease. In any event, all of those processes would take longer than a week to get through the courts – by which time the Exhibition will have passed.

The Mayor/GLAP could write to RoDMA formally objecting to the licence of the activity and tell RoDMA it considers the use of the demise for this purpose is offensive. Such a letter could be used in the year to come when the question of setting business plans for use of the demise is debated at board level and the question of re-licencing the activity crops up. It also gives the Mayor a legitimate means of setting out an objection – just on the understanding that the legal advice is that enforcement would have little/no prospect of success and would be impractical in terms of timing anyway.

### **As Shareholder/Directors of RoDMA**

The issue of how RoDMA as a board and its shareholders approach the decision to grant the licence is one to consider. It is considered that the use of the dock – envisaged in the licence to DSEI – is permitted by the lease and also that RoDMA are entitled to permit it under the shareholder agreement. Under clause 5.1(b) of the shareholder agreement RoDMA is permitted to use the dock for the promotion of business recreation and other activities in the Group of Royal Docks including access by the general public to the water areas.

DSEI– and moorings associated therewith, are plainly business and/or other activity. There is however an issue about the restriction of the public's access to the water.

It is considered, particularly given the previous use of the water for this purpose in the past – that granting the DSEI a licence is part of the ordinary course of business. However, to some extent it will mean the

public has restricted access to the water areas. The extent of the restriction needs to be understood further – it would be useful to see a plan of the area and an understanding of how that links in to the wider restrictions around ExCel during the exhibition.

#### As Special Shareholder

The Special Directors are defined as the director appointed by the Special Shareholder. It is understood that it is LB Newham (however no evidence has been produced and the shareholders' agreement seems to suggest (clause 10) that GLAP is the special Shareholder).

Clause 5.23 of the Shareholders Agreement grants the Special Directors the right to veto any licence if they have reasonable grounds to believe that the public will be denied reasonable access to the water. The veto is restricted. First, the public has a right to reasonable access to the water (i.e. it's not an unlimited right and DSEI are, I assume, only seeking a short period of public exclusion). Second, the veto has to take account of the interests of the shareholders as a whole (can it be assumed that City Airport and Excel would be in favour of the licence being granted?) and third the veto has to be exercised in the interests of good estate management.

#### As a RoDMA Director

It is our understanding that GLAP has never raised a concern that the licence for DSEI is not within its ordinary course of business. However, the directors of RoDMA give an undertaking in the Shareholders Agreement (clause 5.1) to ensure the company complies with its 'purpose'. If it was found that issuing the DSEI licence restricted the access to the water areas by the general public, then the directors would be acting fairly in raising this as a concern when presented with a business plan including such licences. Also, given the Mayor is seeking to make a public statement against the DSEI this year and has given the undertaking outlined above; the Directors representing GLAP's Shareholding could raise this question as one which should be considered by the wider shareholders.

#### **The Excel Lease**

Clause 3.6 and 3.14 of the Excel Lease sets out the provisions which are similar to those in the RoDMA lease referred to above – i.e. licencing activity and use and the restriction of nuisance.

Clause 3.6.1 and 3.6.2 restricts the use of the demise for any use which is a nuisance. This is an exhibition centre – it holds exhibitions which draw significant crowds and require the management of local roads and train stations etc. with appropriate controls and stewarding. The DSEI will include more of these restrictions than, for example, Grand Designs home show but those restrictions will, if approved by TfL/Newham/the police be lawful and unlikely to be a nuisance if they are temporary and kept as minimal as reasonably required. Further, the nuisance has to be on the demised premises to be a breach of the lease – the restrictions on the surrounding roads and areas are not on the demise and if licenced by appropriate stakeholders, will be lawful.

Clause 3.6.2 raises the same point as the one above in the use of the term offensive. The advice is the same. The arms trade may very well be offensive to many people but it is lawful and is major part of the UK's global economic offering. I think GLAP as Landlord could set out its view that the activity of the exhibition is offensive but as with RoDMA it is unlikely that there is any prospect of successful enforcement.

The freehold reversion on the RoDMA lease is still 200 years away. It is unlikely that a court is going to conclude that GLAP's interest in the land in 200 years' time is being damaged by mooring some warships in the dock in 2019. Likewise, the Excel reversion – i.e. what impact is any nuisance having on the interest in the freehold. It is likely that none will be the answer.

Clause 3.14 – there is no need for Excel to seek a licence to hold a bona fide exhibition. GLAP cannot refuse an application it is not entitled to receive.

### Summary

If Excel and RoDMA are minded to agree to licence the use of the centre and the docks by DSEI for the arms fair, it doesn't appear that GLAP has power as landlord to effectively refuse consent or restrain the activity.

### **Conclusion**

It is understood that there is a desire to make a statement about DSEI but we do not consider that the leases provide an effective means of restricting the activity. The best means, even if it is too late now for this year's event, would appear to be working with RoDMA in terms of its standard licences or in terms of its objectives to create terms which in the future rule out licences of this type. For example, RoDMA might seek consent to change the standard terms of licence (GLAP has to approve amendments) to prevent licensees from promoting the sale of guns/weapons etc. Likewise, RoDMA might adopt a formal position against this type of activity and make clear that in future years DSEI type applications will be turned down.

The Mayor could lobby the board of RoDMA to do those things. The board will take its own advice on whether it wants to do those things or if those things are in the best interest of RoDMA as the steward/manager of the docks. As outlined above depending on where we get to on establishing whether there is exclusive use, there may be more formal options/arguments to run as shareholders.