

LFVDA Board Meeting October 26, 1994

Paper One Update on progress on Hoxton Square development.

General.

1 The Building Sub Committee has met twice over the summer to review progress and examine legal and financial documentation (June 22 and October 4 - minutes attached). The Board has also been kept up to date with broad developments via presentations to meetings and papers from the Chief Executive.

2 The first of those sub-committee meetings focused on the financial aspects of the development, in particular the business planning of the two organisations. Concerns re. the financial planning of the London Film Makers Co-op in particular were raised and the subcommittee concluded that "the design and build programme should be used to refine and reinforce the business plan of the two groups but that a reasonable preliminary basis for proceed existed". SM has subsequently been working with both organisation on these issues. Further, the Co-op will be commissioning some more detailed research to produce more robust box-office figures.

3 This meeting, and the second, also looked at the draft legal documentation - see separate section below.

4 LFVDA/BFI/Co-op and London Electronic Arts (as it is now called) have also been engaged in a capital development programme, in the first instance geared towards securing European Regional Development Funding. Insofar as these things can be predicted with confidence, we are confident that funding of the order of £400,000 can be secured through ERDF. This is supplemented by the £200,000 already in place from the Foundation for Sport and the Arts. We will also be approaching the National Lottery for further capital funding.

5 Final detail of the cost of the fit out (the Tenant's Works as specified in the legal documentation) are still to be finalised by our consultants. Initial projections suggest that it will be of the order of £400,000 with the residue being applied to initial recapitalising the two groups. The Board should also remember, however, that the BFI's surety guarantees the LFVDA's performance under the terms of the lease - including the completion of Tenant's Works (see 16, below). We are also in the process of working up a bid to the National Lottery for the

remainder of the capital necessary to modernise fully the equipment base of the two groups. Soundings from the Lottery Office lead us to be confident that a bid for this project will be well received.

6 Following initial drawings from Glasshouse's (the developer) architects (Maccreanor Lavington), we commissioned Burrell Foley Fischer to undertake a scheme appraisal on our behalf - particularly looking at the cinema space. This has led to certain modification to the ground floor demise and will lead to other modifications to the Shell and Core specifications (what the Developer will deliver to us). Subsequent to the scheme appraisal we have contracted BFF to provide full architectural services to the ground floor space (cinema, foyer, etc.) Maccreanor Lavington will continue to provide architectural services for the non-cinema spaces. They have already done much work with the two groups on their space requirements and no material problems were identified by BFF in their appraisal. It should be recalled that the two spaces are totally separate - this dual approach should not provide any substantial difficulties (indeed the use of ML should provide certain cost savings). The approach was endorsed by the Building sub-committee on October 4. Contracts are/will be with the LFVDA with the BFI covering the full costs of professional and legal fees.

7 BFF and ML have in turn appointed their own sub contractors to undertake work on acoustic, quantity surveying, mechanical and electrical, and structural questions. Again, contracts are/will be with the LFVDA with the BFI covering the full costs of these professional fees.

8 Acting on the advice of Tony Kirkhope, we have arranged for the legal documentation to be checked by an outside advisor to ensure that it meets with our expectations and does not contain any hidden time bombs. We have contracted Michael Freedman and Alders to undertake this. His report will be available for the meeting of ~~October 26~~. *November 8*

9 SM has met Ian Taplin at Rees Pollock to discuss the issue of VAT. It is not clear at the moment whether or not Glasshouse will opt to impose VAT on the rent (which we will then need to be in a position to recharge to LEA and the Co-op - both of which are VAT registered). We will also look to devise ways to reclaim as much of the VAT on the building work as possible. This can apply retrospectively on bills already paid. It appears that we should be able to register for partial exemption from VAT (i.e. we will

pay VAT on some activities and recharge on others). The advantages of this route (as opposed to setting up a separate company) are not just the overall simplicity but, crucially, the opportunity it will offer to recover VAT on certain general LFVDA activity. For example, we would be able to claim that a proportion of the VAT on, say, new computers or a photocopier, or the phone bill, etc. is attributable to the VAT registered element of our work and therefore can be reclaimed. There appear to be no obstacles to this route in terms of the LFVDA's charitable objectives as laid out in our memorandum and articles of association.

10 Ian advises us that it might be difficult to reclaim VAT on the building work if there were no increase in value attributable to that work (which would generate additional VAT income to the Inland Revenue). In other words, we might have to charge more to the sub-lessees per square foot than we pay to Glasshouse (although we could compensate them by an appropriate uplift in grant). He is to undertake further research and come back with a detailed proposal. **Board is recommended that we continue exploring this option with the advice of Rees Pollock with a formal recommendation re. Registration being brought to the next appropriate Board meeting for discussion. It is further recommended, however, that for the purposes of budgeting the building work at the moment, we do not take for granted the possibility of reclaiming VAT.**

The Legal Documentation:

11 Attached to this introductory note is the (hopefully) final Agreement for Lease plus two Lease documents, one for the bulk of rented space on a term of 25 years (RMB/530600/00090004), the other for another slice of space over 3 years (RMB/530600/00090005). Board will remember that it was agreed that this extra slice of the property be taken on in order to increase the borrowing ability of the Developers. The BFI is prepared to make available additional funds to cover this additional financial burden but it is also hoped to find a tenant for this space in the meantime and therefore eliminate the necessity to cover this expense. Glasshouse has undertaken to use "its reasonable endeavours" to find an alternative tenant and thereby release us from the lease (Lease RMB/530600/00090005, page 7, para 5.7).

12 The overall shape of the lease is fairly standard. On the main lease (RMB/530600/00090004), we are tied into holding the head lease for 25 years with full privity of contract (i.e. we cannot

assign and walk away from this obligation). This has proved a difficult negotiating point between Glasshouse and the BFI. The BFI has now conceded that its covenant will remain in place for the full 25 years.

13 The rent is as specified in the lease documents (which works out at £8/ft²). The first rent review will come into effect 5 years after taking possession of the building for the purposes of Tenant's Works. In order to limit as far as possible the scope for rent rises, we have succeeded in having the cinema space being very tightly defined in terms of usage (cinema use and ancillary performance). In terms of a rent review, this should significantly reduce its rentable value.

14 There is a very limited rent free period during which Tenant's Works will be carried out (or, perhaps, just started). It would have been preferred to have a much more substantial rent free period. In the event, the BFI has undertaken that its "existing commitment to support the rent of both LVA and LFMC will of course cover this period [of fit out]". It should also be borne in mind that the BFI's guarantee of the LFVDA performance under the terms of the lease underwrites the completion of the Tenant's Works within the specified time period.

15 The deliberations of the Building Sub Committee and subsequent negotiation between LFVDA/BFI and Glasshouse have resolved all material outstanding contractual issues, as will be seen in the accompanying minutes of the sub-committee meetings. **At the Board meeting of October 26, SM will outline the details of how final outstanding issues in the agreement to lease and leases themselves have been resolved.**

16 To be attached to the legal documentation will be the final schedules for building work and tenant's fit out work. Their non-appearance here does not appear to be material for the purposes of agreement to the legal documentation by the Board of the LFVDA. This is for two reasons:

16.1 Our delivery of Tenant's Works is, as noted above, really a matter for the BFI which guarantees our performance.

16.2 The detailed technical specifications of the schedules for building work and tenant's fit out work will need to be fully scrutinised and approved by BFF acting as our overall technical consultant.

17 Recommendation

Board is recommended to approve the final forms of the legal documentation and to approve proceeding to signature and exchange of documentation (subject to final approval by BFI and our consultants to schedules for building work and tenant's fit out work as specified in para 16, above).

18 The Sub leases.

Sub leases are being drawn up between LFVDA and the two sub tenants (LFMC and LEA). These will mirror in all important details the main lease between LFVDA and Glasshouse - a term of 25 years, full privity of contract, etc. No significant problems are anticipated here. Not only have no issues been thrown up by scrutiny of early drafts of leases but, at the end of the day, both organisations are now wholeheartedly committed to the project as their only hope of substantial development and expansion. **Guidance is sought from the Board as to how to proceed with completion of negotiations of sub-leases - should these be approved by full Board or is authority to be delegated to the Building Sub-Committee?**

Steve McIntyre (23/10/94)