



Tuesday, 15 January 2013

HARBOUR COMMITTEE

A meeting of **Harbour Committee** will be held on

Wednesday, 23 January 2013

commencing at **6.00 pm**

The meeting will be held in the The Ballroom, Oldway Mansion, Paignton

Members of the Committee

Councillor Amil	Councillor McPhail
Councillor Baldrey	Councillor James
Councillor Ellery	Mayor Oliver
Councillor Faulkner (J)	Councillor Richards
Councillor Hytche	

External Advisors

Mr Buckpitt, Capt. Curtis, Ms Hayes, Mr Jennings and Mr Stewart

Working for a healthy, prosperous and happy Bay

For information relating to this meeting or to request a copy in another format or language please contact:

**Kay Heywood, Town Hall, Castle Circus, Torquay, TQ1 3DR
01803 207026**

Email: governance.support@torbay.gov.uk



HARBOUR COMMITTEE AGENDA

1. Apologies

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

2. Declarations of interest

- (a) To receive declarations of non pecuniary interests in respect of items on this agenda

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

3. Urgent items

To consider any other items that the Chairman decides are urgent.

4. Blue Sea Food

Consideration of renewal of landlord's consent.

(Pages 1 - 7)

Item deferred from Harbour Committee on 17 December 2012.

5. Public speaking

If you wish to speak on the item shown on this agenda, please contact Governance Support on 207087 or email governance.support@torbay.gov.uk before 11 am on the day of the meeting.



Meeting: Harbour Committee

Date: 17th December 2012


Wards Affected: Roundham with Hyde

Report Title: Leased area in front of Units 15 and 16 ~ 18 at Paignton Harbour

Executive Lead Contact Details: Non-Executive Function

Supporting Officer Contact Details: Kevin Mowat

**Executive Head of Tor Bay Harbour Authority
Tor Bay Harbour Master**

 **Telephone: 01803 292429**

 **E.mail: Kevin.Mowat@torbay.gov.uk**

1. Purpose

- 1.1 This report provides Members with the opportunity to consider the future use of the leased area in front of the Blue Sea Food factory on the harbour estate at Paignton Harbour.
- 1.2 The Committee is asked to consider this matter in its capacity as a landlord, with due regard to its responsibility for the safe management of the harbour estate and the overall business of the harbour authority.

2. Proposed Decision

- 2.1 **That the Executive Head of Tor Bay Harbour Authority be instructed not to renew the lease to the Blue Sea Food Company Ltd for the area of land in front of Units 15 and 16 ~ 18, on the harbour estate at Paignton Harbour.**

3. Summary

- 3.1 An area of land on the harbour estate at Paignton Harbour has been used under licence by various tenants of the adjoining factory for the purposes of parking vehicles. More recently in 2010 a 2 year excluded lease was granted to the Blue Sea Food Company to enable the siting of a 40 ft container and blast freezer. The lease contained a requirement for the tenant to comply with all relevant legislation including the need, if applicable, for Planning permission.
- 3.2 When this short term lease was due to expire in April 2012 the Executive Head of Tor Bay Harbour Authority agreed to renew the lease for a further 12 months. Planning consent was still in place at the date of the lease renewal. However, applications to renew this consent were refused by the Council's Development Management Committee in May 2012 and again in August 2012. Following concerns raised about the impact of these decisions the Development Management Committee decided in October 2012 to issue a deferred enforcement notice.

- 3.3 No Planning enforcement action will now be effective before 31st December 2013.
- 3.4 Although the position from a Development Management perspective (Planning) has been well debated, the matters relating to the safe management of the harbour estate and the overall business of the harbour authority now need urgent consideration. To this end it should not be relevant to the Harbour Committee whether or not planning consent has been granted or denied. The Harbour Authority is required to act, as a landlord, in the best interests of Tor Bay Harbour.
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Supporting Information

4. Position

- 4.1 Tor Bay Harbour Authority is the landlord for the harbour estate at Paignton harbour. In March 2010 the Blue Sea Food Company requested permission from the Executive Head of Tor Bay Harbour Authority to site a 40 ft container outside their factory and they also sought retrospective permission for a blast freezer in the same area.
- 4.2 On the 14th April 2010 heads of terms were issued for a 2 year agreement. At the same time the Planning officers indicated that temporary consent would be required but that such was likely to receive support.
- 4.3 A new lease was eventually granted for 2 years from 15th April 2010. Planning permission was also granted but this required removal of both items by the 31st May 2012.
- 4.4 The Blue Sea Food Company were reminded in March 2012 to consider their position regarding the lease and the Planning consent. Consequently on the 27th March instructions were issued to solicitors to re-new the Council's agreement with the Blue Sea Food Company for a further 12 months, it was expected that the tenant would need to renew the Planning consent. At the time, in order to avoid the tenant gaining security of tenure through a protected lease, the Executive Head of Tor Bay Harbour Authority had little choice but to renew the lease on a short term basis pending a decision regarding the Planning consent.
- 4.5 In early April a draft lease had been drawn up and the tenant queried whether the lease could be longer. The tenant was advised that it could only be for 12 months because of the concerns expressed by the Harbour Master regarding the operational impact of the container usage on the safe management of the harbour estate and the overall business of the harbour authority in the longer term.
- 4.6 On the 17th April 2012 the 12 month lease was completed but on the 24th May 2012 Planning permission was refused. The reason for completing the lease in this way was to ensure that the Council retained the ability to have sole control over the site (see Para 4.4 above).
- 4.7 On the 25th July 2012 a new Planning application was submitted but this was again refused.

4.8 In October 2012 the Development Management Committee considered a report regarding proposed enforcement action against the Blue Sea Food Company. The Committee decided to issue a deferred enforcement notice with the compliance date delayed until the 31st December 2013. However, the blast freezer was to be removed by the end of October (this has now taken place).

5. Possibilities and Options

5.1 To allow the Blue Sea Food Company to keep their 40 ft container on the harbour estate at Paignton until the end of December 2013. This option will mean that Paignton harbour will have to endure another summer season with the impacts that relate to this additional processing capacity. These impacts include traffic disruption caused by heavy vehicles and forklift truck activity in a relatively small and restricted area. Other undesirable impacts for the Harbour Authority, as landlord, include smell and waste contamination.

5.2 To terminate the lease on 14th April 2013.

6. Preferred Solution/Option

6.1 To terminate the lease on 14th April 2013.

7. Consultation

7.1 The additional processing capacity has caused a number of concerns amongst harbour stakeholders and these have been discussed at harbour users meetings and at the Harbour Liaison Forum. Both the Harbour Master and the Chairman of the Harbour Committee have objected to the various requests for planning consent.

7.2 The Development Management Committee has acknowledged that there are 'local objections and understandable concerns'.

8. Risks

8.1 There is a risk to public safety due to higher levels of vehicular traffic both in terms of size and frequency. Several youth groups operate in close proximity to these commercial operations, although usually at different times of the day.

8.2 There is a risk to the income received from the use of the slipway and this is already in decline. It is difficult to determine what the exact cause for this falling revenue is but the Blue Sea Food Company situation may well be a contributory factor. Consequently there may well be a reputational risk with regard to people's perception of Paignton harbour.

8.3 It is understood that there might be an impact on jobs at the Blue Sea Food Company if the container is removed. The decision to issue a deferred enforcement notice may well have been taken to safeguard any jobs which were allegedly under threat. Members are reminded that the Blue Sea Food Company will still have a factory at Paignton harbour and premises elsewhere in Paignton.

Appendices

Appendix 1 Heads of Terms for Lease to the Blue Sea Food Company Ltd

Additional Information

Appendix 1

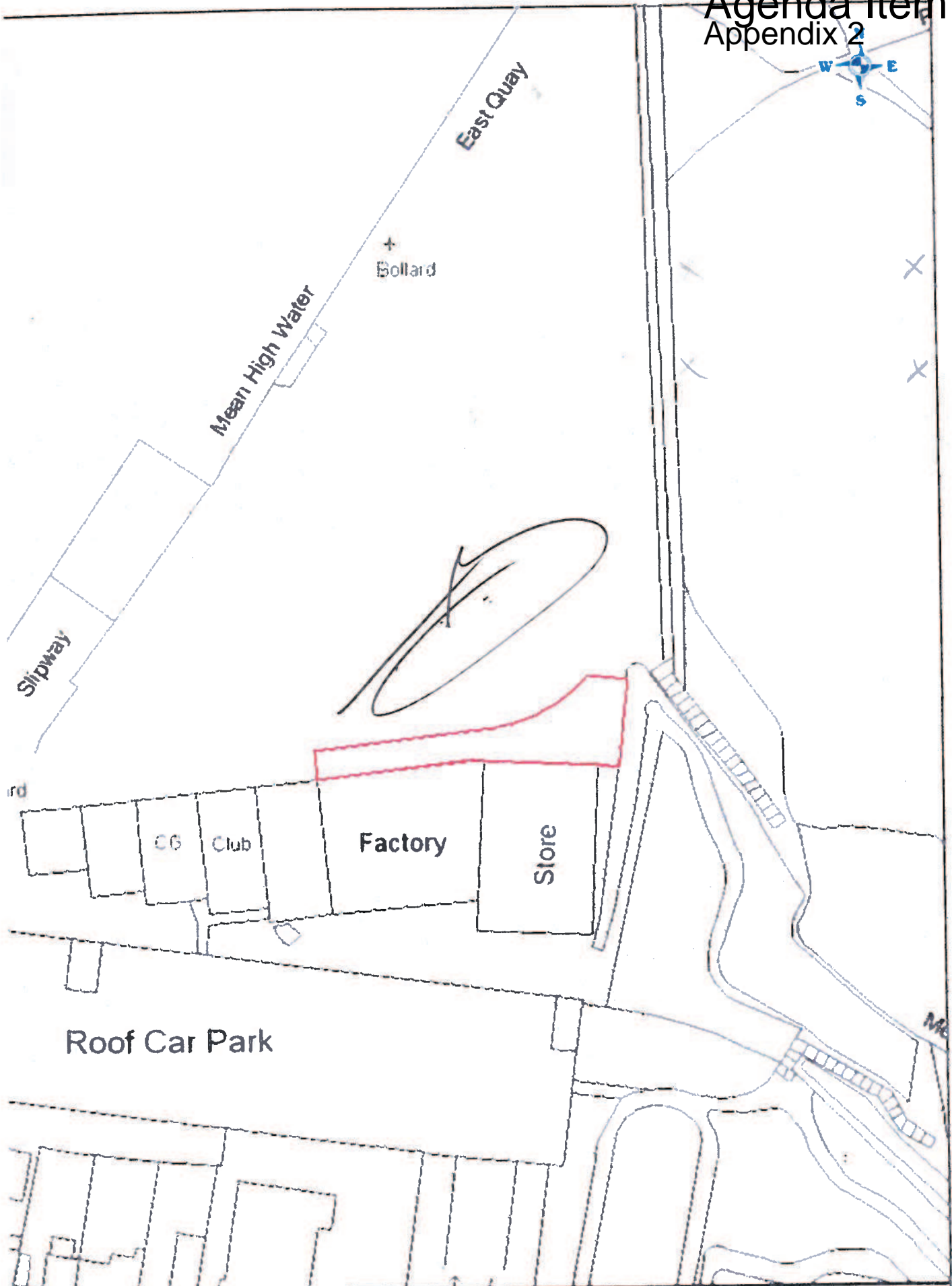
Heads of Terms

Premises:	Area of Land at Paignton Harbour as shown edged red on attached plan.
Form of Document:	New Lease
Tenant:	The Blue Sea Food Company Ltd, South Quay, The Harbour, Paignton, TQ4 6DT
Rent:	£[REDACTED]pa, plus VAT.
Lease Length:	12 months subject to termination by either party at any time on 3 months prior notice Lease ends 14/4/13
1954 Landlord and Tenant Act:	The lease is excluded from the Security of Tenure provisions of the Landlord and Tenant Act 1954.
Rights:	As per the main lease of the adjoining premises.
Rent Review:	None
Alienation:	The lease can only be assigned in relation to any assignment of adjoining premises which are let to the same tenant. No sub-letting will be permitted.
Repairs:	The tenant shall maintain any container, portacabin or similar structure or matter brought onto the land, in good repair and condition, and shall if destroyed by fire, remove all remains thereof from site.
Permitted Use:	To use the land for: <ol style="list-style-type: none">1. Parking of taxed motor vehicles and lorries used in connection with the business of The Blue Sea Food Company Ltd and/or2. The siting of a temporary blast freezer in the location shown on the attached plan and/or3. The siting of a temporary container in the location shown on the attached plan. <u>but</u> for no other purpose.
Alterations:	Not to make any alterations to the Premises, or to connect with any services located on the Premises or the landlord's adjoining land or discharge into any service media located on the Premises or on the landlord's adjoining land without providing details, including drawings relating thereto for the approval of the landlord, such approval not to be unreasonably withheld or delayed.
Insurance:	To keep any containers, portacabins etc. situated on the premises adequately insured.

Outgoings: The tenant shall be responsible for the payment of all outgoings relating to the use of the premises or anything brought thereon.

Other matters

1. No vehicles whether belonging to staff or visitors, or those unloading from or loading to the premises shall be parked otherwise than on the premises.
2. The tenant will use all reasonable endeavours to ensure that deliveries are made before 9am or after 6pm.
3. The tenant will use all reasonable endeavours to ensure that the movement of large vehicles, including, without prejudice to the generality of the foregoing articulated lorries, visiting the premises are adequately controlled and co-ordinated, including where appropriate the use of banksmen.
4. The tenant shall comply with all relevant Statutory requirements, including without prejudice to the generality of this clause, Environmental Health and Planning.
5. The tenant shall be responsible for the payment of the landlord's reasonable legal costs in this matter, whether or not the same proceeds to completion.



Area of land at Paignton Harbour.

EM Plan No: EM2061

Asset No: P0241AU

Date: 9th April 2010

Scale: 1:500



PAIGNTON DEVELOPMENT AGENCY - ESTATES SERVICE

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