

Report to Development Management Committee

Blue Seafood Company – Proposed Enforcement Action

1.0 Background

- 1.1. Following the refusal of application P/2012/0704 on the 13th August 2012, officers have been considering enforcement action to secure the permanent removal of the structures from the site.
- 1.2 Given the known impact on jobs some delay followed the Committee decision to see whether the TDA could provide help or a solution which would safeguard any jobs which were allegedly under threat. It is understood that a meeting took place but no answers were found.
- 1.3 In these circumstances the Executive Head of Spatial Planning met the applicant on site and at his new premises near Long Road.
- 1.4 Members views were then sought in relation to an enforcement action and the timing of compliance. The Executive Head initially advised a compliance date of the 31st December 2013. Some Members were concerned that this timeframe ran counter to their decision on the planning application.

2.0 Reasons for suggesting an extended date

- 2.1 The applicant's submission that he genuinely intends to relocate in total to Long Road once his business circumstances allowed seems genuine. There is clearly considerable unused and expensive space at Long Road held in readiness for the move. Jobs seemed to be genuinely under threat.
- 2.2 In discussion with the harbourmaster the date 31st December 2013 was felt by him to be tolerable as an absolute deadline.
- 2.3 A question mark was raised about whether the structures needed consent because they were allegedly moveable, stationed within the curtilage of the site and used for a purpose ancillary to the main use. Our legal advisors have since advised that based on recent case law the structures do need planning consent.
- 2.4 The applicant volunteered on site to remove the refrigeration unit in October 2012 and to improve the appearance of the remaining unit through attractive artwork.
- 2.5 When an enforcement notice is served there are times set before it takes effect; times within which an appeal may be lodged; and times within which the notice must be complied with, i.e. in this case units permanently removed from the site. In these circumstances what might be consider as a 'fast-track enforcement' notice is unlikely to achieve removal for over 7 months from the date of service given the applicant's stated intention to appeal. It is a matter of judgement as to whether an extension of time to the 31st December 2013 could be tolerated in these circumstances given the importance of jobs.

3.0 Proposals

- 3.1 Given local objections and understandable concerns, Members are asked to fast-track the removal of the refrigeration unit as set out in Option 1 below. In relation to the other bigger unit, Members' instructions are requested as to which of the two options set out below they wish to pursue.

3.2 Option 1 – Fast-track Removal

Prepare notice and give 28 days to take effect, and 3 months for compliance.

3.3 28 days is the minimum period allowed for the notice to take effect and 3 months for compliance is felt to be the minimum reasonable response time given this is a business and jobs are involved.

3.4 However, an appeal may be lodged before the notice takes effect, i.e. within the 28 days. If so, the matter is held in abeyance until the appeal is determined by an Inspector. This could take 3 to 6 months, depending on the method of appeal and workloads at the Inspectorate. If the appeal is dismissed and the notice is upheld or not varied by the Inspector, the compliance period is reset from the date of the appeal decision. In effect this means that at best a so-called fast-track enforcement notice is unlikely to achieve removal of the structures for between 7-10 months from October, i.e. May to July 2013.

3.5 Option 2

Delay compliance date until the 31st December 2013, whilst securing an improvement to the appearance of the unit with an art scheme.

3.6 The timetable within which the notice takes effect and period for appeal would remain as above, but given the applicant's circumstances the date for compliance would be fixed at the 31st December 2013. If an appeal is lodged and not upheld it would likely be determined sometime between January and March 2013.

3.7 In these circumstances if the appeal is dismissed or not varied, the December 2013 deadline is unchallengeable and the matter can be referred for prosecution for non-compliance with the notice.

3.8 Members have inquired about how Option 2 differs from their decision to refuse the planning application to keep the units on site until the 31st December 2013.

3.9 It is argued that circumstances are different in that:-

- 1) One of the units will have gone;
- 2) The appearance of the remaining unit will be improved as secured by the enforcement notice;
- 3) Once any appeal into the enforcement notice has been determined, and this will have happened long before the 31st December 2013, there will be certainty about the ability to prosecute for non-removal.

3.10 If the application had been approved with a condition requiring removal by December 2013 and that condition had not been complied with, the Council would need to serve an enforcement notice at that time which would mean at least a further 7 months before removal if an appeal was lodged (as set out in Option 1 above).

4.0 Recommendation

4.1 Members adopt Option 1 in relation to the freezer unit (if it has not already gone by the Committee date) and Option 2 in relation to the remaining unit.