

Subject:	Brighton Marina Act 1968: application for a waiver regarding water depth		
Date of meeting	16th January 2014		
Report of:	Head of Law and Executive Director of Finance & Resources		
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Ward(s) affected:	Rottingdean Central		

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 19, Access to Information Rule 5 and Section 100B(4) of the 1972 Local Government Act as amended (items not to be considered unless the agenda is open to inspection at least five days in advance of the meeting) are that the application the subject of this report was received on 31st December 2013 and it was not possible to finalise the report before the 9th January 2014. It is considered to be in the interests of the council to consider the application at this meeting rather than delay such consideration until the following meeting.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 To agree that consent may be given under section 55(1) of the Brighton Marina Act 1968 to change the depth of water in parts of the harbour to Brighton Marina.

2. RECOMMENDATIONS:

- 2.1 That the Committee, on behalf of the council, agrees to grant consent under section 55(1) of the Brighton Marina Act 1968, in respect of the changes to the depth of the water in parts of the harbour to Brighton Marina associated with the implementation of the planning permissions BH2006/01124/FP and BH2012/04048 and that such consent shall be evidenced by the form of Agreements set out in Appendix 2 to this report.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Brighton Marina is subject to the terms of the Brighton Marina Act 1968 ("BMA"), certain provisions of which are expressly stated to be for "the protection of" the council and capable of being varied if "agreed in writing" between the lessees of

the Marina and the council. One such provision, at section 57(4) BMA, relates to the depth of water at certain locations at the level of “mean low water springs” (“MLWS”). MLWS is the average low tide level, as further explained in Appendix 1 to this report. which sets out the relevant BMA provisions.

- 3.2 In 2006 planning permission BH2006/01124/FP was granted by the council for a scheme at the Marina providing 853 residential units together with retail, office and community uses. A Full Council meeting also gave consent under section 55(1) of the BMA, so that the height of the development could exceed the cliff height restriction referred to at section 59(1) BMA. DEFRA granted licences for these works, but they subsequently expired.
- 3.3 The 2006 planning permission was subsequently implemented (but not built out) so that it did not expire and in 2013 certain design changes, which did not alter the footprint of the development (which reduces the width of the inner entrance from approx 45 to 40 metres) or require a further BMA height consent, were granted planning permission BH2012/04048 by the council. DEFRA’s coastal licensing powers have transferred to the Marine Management Organisation (“MMO”) and they granted a licence for Phase 1 of the development on 19th December 2013.
- 3.4 On 30th December 2013 the lessees’ lawyers contacted the council seeking consent under section 55(1) BMA in relation to the changes to the depth of water associated with the development as those parts of the development which build out into the harbour will displace the water currently there. This consent could have been sought back in 2006, but appears to have been overlooked at the time. The application is set out in Appendix 2. Appendix 2 also contains the wording of the proposed agreements and includes plans provided by the applicant showing the current harbour layout and that proposed after the development referred to in the application.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The Application for consent sets out cogent reasons for granting the statutory consent and entering into the agreements accordingly. These include
 - the protective provision in section 57(4) BMA predates construction of the Marina and its operation; many years later it is clear how the Marina and harbour operates and how navigation is safely managed.
 - when the council granted planning permission in 2006 and 2013, it took into account the environment impact assessment, which concluded that the development would have no deleterious impact on navigational issues.
 - the MMO have granted a marina licence, having considered all relevant considerations, including navigational safety.
 - the Statutory Harbour Authority (Brighton Marina Company Limited) and the marina operator (Premier Marinas (Brighton) Limited), who has a

long sub lease of the harbour area, are satisfied that there are no adverse issues arising from the proposed consent and agreements.

- 4.2 The purpose of section 57(4) BMA is to safeguard navigation and given the circumstances, particularly the granting of planning permission and the MMO licence, the grant of BMA consent should be given and the appropriate agreements with The Brighton Marina Company Limited, The Outer Harbour Development Partnership LLP and The West Quay Development Company Partnership LLP, set out in Appendix 2, entered into.
- 4.3 To grant consent would be consistent with previous decisions of the council and other public bodies and there are no known grounds for refusing the application.

5. COMMUNITY ENGAGEMENT & CONSULTATION

Although there has been no specific community engagement or consultation regarding the consent being sought, there has been significant consultation regarding the planning and MMO licence processes. The Statutory Harbour Authority and the marina operator support the application and make reference to the potential improvement in the wind climate, by virtue of the buildings giving increased protection to the harbour.

6. CONCLUSION

It is considered appropriate to grant BMA consent and enter into the proposed agreements set out in Appendix 3 to this report.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 There are no financial implications arising from this report.

Finance Officer Consulted: Catherine Vaughan

Date: 08.01.14

Legal Implications:

- 7.2 The Act does not set out any criteria for how the council should exercise its statutory discretion. To grant consent in the form sought would be consistent with previous decisions of the council and other public bodies and would represent the reasonable and proper exercise of the council's discretion under the BMA. As with most council decisions, judicial review would be available in the event of a person affected by the decision considering it to be unreasonable.

Lawyer Consulted: Bob Bruce

Date: 07.01.14

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1: Extracts from the Brighton Marina Act 1968.

Appendix 2: Application under the Brighton Marina Act 1968., proposed form of Agreements to evidence consent to the application and relevant plans.

Documents in Members' Rooms

NONE

Background Documents

NONE

APPENDIX 1

RELEVANT EXTRACTS FROM THE BRIGHTON MARINA ACT 1968

The relevant BMA provisions are in sections 55(1) and 57.4 (a), (b), (c) and (e) which are reproduced below.

55.(1) For the protection of the corporation the next following four sections of this Act shall unless otherwise agreed in writing between the Company and the corporation apply and have effect.

57.(4) From and after the opening of the harbour for the use of vessels the Company shall secure at all times when the water is at the level of mean low-water springs –

- (a) the depth of water is not less than 8 feet in the area (other than so much thereof as lies within a distance of 10 yards from any parts of the works) substantially enclosed by the whole or parts of Works Nos. 1, 2, 3, 4, 5 and 6 and by an imaginary straight line drawn from a point on Work No. 6 90 yards measured in a northerly direction from the termination of that work in a direction west (true) for a distance of 100 yards and thence such a line drawn in a direction west-south-west (true) to the breakwater Work No. 1;
- (b) the depth of water is not less than 8 feet in the area within the inner harbour (other than so much thereof as lies within a distance of 10 yards from any parts of the works) substantially enclosed by the whole or parts of Works Nos. 3, 4, 5 and 6 and by an imaginary straight line drawn from a point on Work No. 6 30 yards measured in a northerly direction from the termination of that work in the direction of Work No. 9 for a distance of 170 yards and thence in a southerly direction to the breakwater Work No. 3;
- (c) the depth of water is not less than 8 feet in a channel not less than 200 feet wide lying between the terminations of Works Nos. 2 and 3, and in a channel not less than 80 feet wide lying between the terminations of Works. Nos. 5 and 6;
- (e) the depth of water in the remainder of the inner harbour is not less than five feet at any point.

NB The “level of mean low water springs” is a reference to the lowest level to which spring tides retreat on average over a set period of time. A spring tide is a tide which occurs at or near the time of a full or new moon, when the sea is at its lowest from the mean sea level. Mean sea level is the overall average height of the surface of the sea...

PLANS

The plan at the end of Appendix 2 indicates the current position. The other plan in Appendix 2, which has a hand written note to identify the areas referred to in s57.4(a), (b), (c) and (e), shows the footprint of the development on the Spending Beach and adjoining areas of the harbour.

APPENDIX 2

APPLICATION UNDER THE BMA, PROPOSED FORM OF AGREEMENTS & PLANS