

Questions asked by the examiners.

Matter 1a – Legal Compliance 1.1 In preparing the plan did the Councils engage constructively, actively and on an on-going basis with neighbouring authorities and other relevant organisations on cross-boundary issues, in respect of the Duty to Co-operate? [

1.4 Does the Sustainability Appraisal (SA) provide a comprehensive and robust basis to inform the strategy and contents of the plan,

1.5 Does the plan include policies designed to ensure that the development and use of land in Babergh and Mid Suffolk contributes to the mitigation of, and adaptation to, climate change?

1.6 Does the plan include policies to address the strategic priorities for the development and use of land in Babergh and Mid Suffolk?

Matter 1b – Legal Compliance (Habitats Regulations Assessment)

1.8 Is the Habitats Regulations Assessment robust and does the plan include all the recommendations identified in the assessment as necessary to ensure compliance with the Habitats Regulations?

2.4 Are policies LP09(1) and LP10 positively prepared, justified and effective approaches to planning for the accommodation needs of Gypsies, Travellers, Travelling Showpeople and boat dwellers?

Answers:

Matter 1b – Legal Compliance (Habitats Regulations Assessment)

Question - 1.8 The Habitats Regulations Assessment fails to include a robust plan and fails to recommend any action other than, that a HRA should be required for all future planning applications. This HRA fails to recognise that none of the existing houseboats on this site have planning permission that I am aware of and I can find none that have ever applied for planning permission. It fails to recognise that the law is clear no Houseboats can lawfully moor in the river Orwell.

This HRA fails to acknowledge the following: that Babergh DC have a duty to help protect, conserve and restore European RAMSAR sites. The duty applies to the illegal occupied houseboat site which the Council fails to manage and control, fails to take decisions that affect the site and fails to carry out their statutory duties to protect, conserve or restore the designated features of the site.

Babergh DC: Fails to consider the potential impact on this Ramsar site and SSSI land and any special habitats and species on or close to the house boat site. They fail to meet their conservation objectives, fail to prevent the deterioration of the site's habitats from human activity and fail to prevent significant disturbance of the site's designated species from human activity or natural changes. Fails to consider how the Council can use statutory powers to help European sites meet their conservation objectives.

Babergh DC fails to consider what conservation measures may be necessary and the need to anticipate likely harm or that these illegal houseboats may have had a negative effect on a site in the past, in the present and in the future.

Babergh DC Failed to check for evidence of deterioration or disturbance.

Fails to consider and anticipate the likely harm of the daily discharge of sewage, each and every day, from over 30 static residential sheds which sit on the top of what are best described as wrecks 9 Known as houseboats.

Babergh DC fails to consider how decisions by the council or it's officers might affect a site's conservation objectives and fails to see that the council must not wait until a site is harmed to put conservation measures in place.

David Fisk

Houseboats 2006 local plans

6.53 Houseboats, like permanent dwellings, require services (electricity, water, drainage); because of their isolated location, these services can be difficult or expensive to provide. Houseboats, if not well maintained, can be unattractive intrusions into the countryside, as can the associated land-based developments, such as car parking. Allowing one houseboat could lead to the mooring of others adjacent to it.

CR14 Planning permission will not be granted for houseboats or vessels converted for residential use on estuarial or inland waters

6.54 There are a number of occupied vessels moored off Pin Mill Cliff, some of which have become lawful as a result of acquiring established use rights through the passage of time.

6.55 The mooring of traditional vessels at Pin Mill is part of the character and heritage of the area. It is considered that the numbers and type of vessels need to be controlled, given the location in the Suffolk Coast and Heaths Area of Outstanding Natural Beauty and the pressure on shore based facilities.

CR15 An area for the mooring of houseboats is shown on the Proposals Map at Pin Mill. Outside this area, the mooring of houseboats will not be permitted. Planning permission will only be granted for a houseboat at Pin Mill if it meets the following criteria: • it lies within the area defined on the Proposals Map;

- the total number of houseboats within the area does not rise above 28;
- the houseboat appearance is that of a traditional form of vessel in terms of both the hull and superstructure;
- the vessel is completely riverworthy (capable of floating and being moved) and restored to a high standard complementary to the location within the Suffolk Coast and Heaths Area of Outstanding Natural Beauty;
- it is between approximately 6 and 36 metres (20 and 120 feet) in length; and
- access to it is gained by a jetty and the houseboat to be secured to the jetty or a mooring post.

6.56 In relation to the form of vessels it is considered that traditional types with a distinctive character, such as barges and lighters are acceptable. Vessels formed of pontoons, white fibreglass hulled yachts and catamarans are not part of this traditional character and will be refused planning permission.

The superstructure to vessels should also have a nautical character i.e. features such as shape, massing and detailing which would be recognisable as a feature of a boat rather than a terrestrial residential property and be in proportion with the hull supporting them. Materials should be predominantly wood and/or steel.

Portacabins, mobile homes or caravans and structures which resemble these types of accommodation will not be acceptable. In order to retain planning control over the appearance of houseboats for which planning permission is granted permitted development rights will be removed.

BABERGH LOCAL PLAN ALTERATION NO 2 (2006) 147 6.57 The land-based developments associated with houseboats at Pin Mill also need to be carefully controlled to ensure that they do not have a material adverse impact on this sensitive environment.

CR16 Planning permission for a new or replacement jetty to serve boats in the area identified for houseboats at Pin Mill, will be granted if:

- the total number of jetties serving the area does not exceed 17;
- it is mainly constructed from wood;
- it is no greater in size than is sufficient to gain safe access to the houseboats; and
- any security measure to prevent unauthorised access to the jetty is in the form of a simple gate matching the jetty construction. Planning permission for storage buildings on jetties at Pin Mill will be granted, so long as they are:
 - a maximum of 2.5 metres in height;
 - a maximum of 5.5 cubic metres in volume;
 - mainly of wooden construction; and
 - in keeping with their surroundings. Planning permission will not be granted for any structures on land adjacent to the area identified for houseboats at Pin Mill, except in the case of proposals necessary for delivering utility services or to act as mooring posts.

LP10 - Moorings, Marinas and Houseboats

1. Outside of the defined moorings and marinas located at Pin Mill, Woolverstone, Shotley and Fox's at Wherstead, there will be no introduction or extension of moorings, marinas and houseboats or the ancillary land based activities across the Stour and Orwell estuaries SPA and Ramsar site (Suffolk Coast RAMS zone of influence).
2. Within the defined moorings and marinas, planning permission will only be granted if all of the following criteria are met to the satisfaction of the LPA:
 - a. **The proposal will not result in any adverse effect (either through construction and or operation) on the integrity of the Stour and Orwell SPA and Ramsar sites and the Suffolk Coast and Heath AONB. If planning permission is granted a CEMP must be agreed prior to commencement of development to demonstrate mitigation of construction impacts.**
 - b. **The proposal must demonstrate appropriate measures to ensure there is no risk of deterioration in Water Framework Directive (WFD) status for the River Stour and Orwell.**

3. A project level HRA will be required for each houseboat planning application and all proposals will need to demonstrate acceptable environmental protection measures and a Construction and Environment Management Plan will be required.
 - a. **If planning permission is granted a Construction Environment Management Plan must be agreed prior to commencement of development to demonstrate mitigation of construction impacts.**
 - b. **Additionally, for houseboat proposals within the defined area of Pin Mill, Chelmondiston:**
 - i. The total number of houseboats is no greater than 28 units.
 - ii. The vessels must be river worthy and capable of floating.
 - iii. Access must be via a jetty.
 - iv. The boat is secured to the access jetty and or a mooring post.
 - v. The applicant enters into a legal agreement for the removal of any vessel that becomes unfit for habitation or is abandoned.

ASSOCIATED BRITISH PORTS

And

BABERGH DISTRICT COUNCIL

and

PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY

Licence Agreement

in relation to moorings at Pin Mill Bay

ASSOCIATED BRITISH PORTS

25 Bedford Street

London

WC2E 9ES

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A LICENCE AGREEMENT made the day of 2018

BETWEEN

(1) ASSOCIATED BRITISH PORTS whose principal office is at 25 Bedford Street, London, WC2E 9ES ("ABP");

(2) BABERGH DISTRICT COUNCIL of Endeavour House, 8 Russell Road, Ipswich IP1 2BX ("Babergh DC"); and

(3) THE PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY whose registered office is at 30 Woodlands, Chelmondiston, Ipswich, England, IP9 1DU Company No. 07436195 (the "CIC").

each referred to in this Licence Agreement as a "Party" and together as the "Parties".

RECITALS

(A) ABP is the owner and operator of the port of Ipswich and the Statutory Harbour Authority for the Ipswich Harbour Area, which includes Pin Mill Bay. ABP acquired Ipswich Port Ltd in 1997 and in 2002 the Port of Ipswich (Transfer of Undertaking) Harbour Revision Order 2002 designated ABP as the harbour authority for the Port of Ipswich in lieu of Ipswich Port Ltd. Statutory authority for Ipswich Port was thus transferred to ABP.

(B) By virtue of Section 12 of the Ipswich Dock Act 1950, ABP is empowered to grant a licence to any person to lay down, maintain and use moorings within the Ipswich Harbour Area and to apply such terms and conditions as it sees fit to the grant of such a licence.

(C) Pin Mill Bay is an area on the River Orwell at Pin Mill, Chelmondiston, Suffolk. By the early 2000s, facilities on an area of the Pin Mill Bay foreshore known as the Hard (the “Hard”) had fallen into disrepair.

(D) Babergh DC promoted a project for refurbishment of the Hard (including new mooring posts, scrubbing posts and barge repair blocks) and construction of a new jetty. This project was carried out by Babergh DC with the support of a task group of local companies, residents and other interested parties and with the active support of ABP and of Ipswich Borough Council (which, as freehold owner of the bed and foreshore of the River Orwell granted Babergh DC a lease of Pin Mill Bay on 19 November 2012). The project was completed in 2010.

(E) The CIC is a not-for-profit company limited by guarantee that was established in 2010 specifically for the purpose of managing the restored and upgraded Pin Mill Bay and was handed such responsibilities at that time. Babergh DC granted to the CIC a sub-lease of Pin Mill Bay for a term of 21 years less 2 days from 19 November 2012, by virtue of which it granted to the CIC the right, inter alia, to use the new and existing mooring posts and scrubbing posts on the Hard. ABP contributed £1,000 per annum for the first three years of the CIC’s activities.

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(F) ABP supported not only the restoration and upgrade works but also the creation of the CIC and its management of Pin Mill Bay. Consequently, ABP was fully aware of and consented, inter alia, to:

- a. the laying down of new mooring posts, scrubbing posts and barge repair blocks by Babergh DC;
- b. the management of the new and existing moorings by the CIC; and
- c. the implementation of a charging regime established by the CIC for use of moorings at Pin Mill Bay.

(G) ABP’s consent and/or grant of a licence to Babergh DC was not formally documented at the time that the CIC was established, but the parties have now concluded that it is appropriate to do so in the light of various challenges at law made against the CIC by third parties.

(H) This Licence Agreement is being entered into for declaratory purposes, to retrospectively confirm ABP's consent to the CIC's historic activities and to clarify the basis upon which the CIC may continue to use moorings at Pin Mill Bay.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATIONS

In this Licence Agreement, unless the context otherwise requires, the following terms have the following meanings:

"Commencement Date" means the date at the head of this Agreement

"Ipswich Harbour Area" means ABP's Statutory Harbour Authority area, comprising the port, harbour and dock of Ipswich and any part of the river between Stoke Bridge and a line drawn across the river from Shotley Point to Fagborough Cliff;

"Moorings" means:

the posts for moorings and scrubbing purposes on the area at Pin Mill bay known as the "Hard" and comprising the concrete access roadway and the shingled area downstream thereof;

the barge repair facilities on the Hard;

the dinghy mooring chain immediately up stream of the concrete roadway of the said Hard; and

the new jetty and its berthing and related anchoring facilities,

all as marked on the Plan;

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"Sub-Lease" means the sublease dated 05 January 2016 pursuant to which Babergh District Council sub-let Pin Mill Bay to the CIC for a term of 21 years less 2 days with effect from 19 November 2012;

"Licence" has the meaning specified in Clause 2.3;

"Licence Period" means a period of twelve consecutive months beginning on the Commencement Date;

"Plan" means the plan of Pin Mill Bay attached to this Licence Agreement as Appendix 1; and

"Pin Mill Bay" means the area of Hard and foreshore over which the CIC has been granted the SubLease, as delineated on the Plan.

The Interpretation Act 1978 will apply to this Licence Agreement in the same way as it applies to an enactment, except where its provisions are inconsistent with any express terms of this Licence Agreement.

The Schedule will have effect as part of this Licence Agreement.

Any references in this Licence Agreement to Clauses or Schedules or Appendices are to clauses of, or schedules or appendices to, this Licence Agreement.

Headings will be ignored in construing this Licence Agreement.

References to a statute or statutory provision include that provision as from time to time modified or re-enacted or consolidated whether before or after the date of this Licence Agreement and any subordinate legislation made under it.

Unless the context otherwise requires, words importing the singular will include the plural and vice versa and reference to any masculine, feminine or neuter gender will include the other genders.

Words importing individuals or persons will include companies, corporations, firms, unincorporated bodies of person and partnerships. The words "include", "including", and "includes" are to be construed as if they were immediately followed by the words "without limitation".

Save as otherwise provided, in the case of conflict or ambiguity, the order of precedence for this Licence Agreement and the documents attached to or referred to in this Licence Agreement will be as follows:

the main body of this Licence Agreement and the Appendix;

the Schedule.

2. GRANT OF LICENCE

ABP acknowledges and agrees that:

at the time that Babergh DC promoted the project for refurbishment of the Hard at Pin Mill Bay, ABP granted an unwritten licence for Babergh DC to lay down, maintain, use, have and

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otherwise deal with (including, but not limited to, administering the use of the Moorings by third parties and issuing any associated charges) the Moorings at Pin Mill Bay;

Babergh DC subsequently granted to the CIC the right to use, have and otherwise deal with (including, but not limited to, administering the use of the Moorings by third parties and issuing any associated charges) the Moorings; and

since the CIC's incorporation in 2010, the CIC has used and maintained the Moorings at Pin Mill Bay in accordance with the rights granted under Sub-Clauses 2.1 (a) and 2.1(b).

ABP further agrees to enter into this Licence Agreement in order to give more formal expression and effect to the arrangements referred to in Clause 2.1 and to provide for revised arrangements for the future in respect of the terms of use of the Moorings by the CIC.

With effect from the Commencement Date, ABP grants to Babergh DC a licence to maintain, use, have and otherwise deal with the Moorings as Babergh DC deems fit, (including, but not limited to, administering the use of the Moorings by third parties and issuing any associated charges) for the Licence Period and subject to the terms of this Licence Agreement and the Terms and Conditions set out in the Schedule to this Licence Agreement (the "Licence").

Babergh DC sub-licences to the CIC its rights under the Licence and Babergh DC and the CIC further agree that, for the purpose of exercising those rights:

the CIC agrees that it shall maintain, use, have and otherwise deal with the Moorings (including, but not limited to, administering the use of the Moorings by third parties and issuing any associated charges) in accordance with the terms of this Licence Agreement; and

the CIC shall enter into the Licence Terms and Conditions set out in the Schedule to this Agreement (both upon signature of this Agreement and in accordance with the provisions of Clause 2.5).

The Parties acknowledge and agree that, following expiry of the Licence Period:

the Licence granted to Babergh DC by ABP and the sub-licence granted by Babergh DC to the CIC shall be renewed automatically each year on the anniversary of the Commencement Date for a period of one year (a "Renewal Year") until the expiry or earlier termination of the Sub-Lease; and

in respect of each Renewal Year, the CIC shall enter into a set of Licence Terms and Conditions with ABP in substantially the same form as set out in the Schedule to this Licence Agreement PROVIDED THAT it is acknowledged by Babergh DC and the CIC that ABP shall be entitled to review the terms and operation of the Licence to take account of any further challenges made by third parties against the CIC or any other circumstances requiring such a review.

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Nothing in this Licence Agreement shall prejudice ABP's entitlement to levy dues on ships, dues on cargo, quay rental or any other charges or to exercise any other power in accordance with its statutory rights and obligations or ABP's Standard Terms and Conditions of Trade.

3. NO ASSIGNMENT

The rights, powers, duties and obligations of the Parties under this Licence Agreement are personal to them and no party may assign or transfer the benefit or burden of this Licence Agreement without the written consent of both other Parties.

4. GENERAL

Any notice in writing that under the terms of this Licence Agreement is to be given to ABP will be deemed effectively served if addressed to ABP and delivered by hand or sent by recorded delivery post addressed to ABP's Harbour Master at Old Custom House, Key Street, Ipswich, IP4 1BY or upon such other person at such address in the United Kingdom as ABP may from time to time appoint for that purpose. Any notice in writing that is to be given by ABP to the CIC will be deemed effectively

served if delivered by hand or sent by recorded delivery post addressed to the CIC to its secretary at its registered office.

The Parties will bear their own costs and expenses incurred in connection with the negotiation and preparation of this Licence Agreement.

This Licence Agreement supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in this Licence Agreement and constitutes the whole agreement between the Parties relating to the subject matter of this Licence Agreement as at the date of this Licence Agreement to the exclusion of any terms implied by law which may be excluded from this Licence Agreement. Each of the Parties represents that it has not entered into this Licence Agreement in reliance on any representation, warranty, undertaking or other statement, expressed or implied, oral or in writing, given or made by or on behalf of any party except in so far as contained in or referred to in this Licence Agreement. This Clause 4.3 will not apply to any representation, undertaking, warranty or statement made fraudulently or which was induced by fraud.

Each Party irrevocably and unconditionally waives any right it may have to claim damages for, and/or rescind this Licence Agreement because of breach of any warranty not contained in this Licence Agreement, or any misrepresentation whether or not contained in this Licence Agreement unless such misrepresentation was made fraudulently.

No purported alteration or variation of this Licence Agreement will be effective unless it is in writing and it refers specifically to this Licence Agreement and is signed by an authorised representative of each of the Parties.

The Contracts (Rights of Third Parties) Act 1999 will not apply to this Licence Agreement and no person who is not a Party to this Licence Agreement (including any employee, officer, representative

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or sub-contractor of either party) will have the right, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Licence Agreement which expressly or by implication confers any benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Clause.

If any provision in this Licence Agreement or any document referred to in it or to be entered into pursuant to or in connection with it is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part will to that extent be deemed not to form part of this Licence Agreement but the legality, validity and enforceability of the remainder of this Licence Agreement will not be affected.

This Licence Agreement may be executed in any number of counterparts and by the Parties on separate counterparts but will not be effective until each Party has signed at least one counterpart. Each of such counterparts (when so executed) will constitute an original of this Licence Agreement and all of which will together constitute one and the same document.

This Licence Agreement will be construed in accordance with and governed by the laws of England and Wales and in the event of any dispute or claim the Courts of England and Wales shall have exclusive jurisdiction.

Nothing contained in this Licence Agreement shall restrict or otherwise affect the ability of ABP to comply with its statutory duties.

SCHEDULE 1

LICENCE TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 In this Schedule, unless the context otherwise requires, the following terms have the following meanings:

LICENSEE : the CIC

LICENCE FEE : £xxx per annum excluding any applicable VAT

LICENCE NUMBER :

COMMENCEMENT DATE :

LICENCE PERIOD : a period of 1 Year commencing on the Commencement Date.

MOORING POINT(S) : [XXX],

being the existing mooring points(s) used and maintained by the Licensee at the Mooring Points pursuant to this Licence.

VESSEL(S) : [XXX], together with such other vessels as may use the Mooring Points from time to time during the Licence Period, as notified by the Licensee to ABP, and a reference to “the Vessels” shall mean any one of these vessels.

1.2 Reference to a “Condition” is a reference to the relevant Condition of these Terms and Conditions. The headings to the Conditions are to be ignored in construing this Licence. The words “include” and “including” are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them.

2. The Licence

2.1 Subject to the terms and conditions set out in this Licence, ABP authorises the Licensee to maintain and use the moorings at the Mooring Point(s).

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2.2 This Licence:

2.2.1 shall be for the Licence Period unless determined in accordance with the terms of this Licence;

2.2.2 is personal to the Licensee and not transferable;

2.2.3 is subservient to ABP’s use of the River Orwell for the purposes of its undertaking; and

2.2.4 shall be exercised by the Licensee at the Licensee’s own risk.

3. Acknowledgements and Declarations

3.1 This Licence does not authorise:-

3.1.1 the discharge or running off into the River Orwell from any boat moored at the Moorings of anything other than unpolluted surface water draining naturally and such sink waste and engine cooling water as may be permitted from time to time by ABP, the Environment Agency or any other competent authority;

3.1.2 the taking of water from the River Orwell; and

3.1.3 any fishing in the River Orwell or mooring save as authorised herein.

4. Licensees' Covenants

The Licensee agrees with ABP:

4.1. To exercise the rights granted by this Licence diligently and in good faith and in the event of any breach of the Licence to immediately notify ABP in writing of such a breach.

4.2 The Licence Fee shall be payable within 30 days of the date of the invoice. For the avoidance of doubt the Licence Fee excludes harbour dues and any other charges that may be levied by ABP.

4.2 To pay all rates, taxes (including any VAT) and other outgoings which are levied in respect of the Mooring Point or otherwise because of this Licence.

4.3 To provide at its own expense any mooring rings and/or other mooring devices required for the proper mooring of the Vessels at the Mooring Points.

4.4 To keep the Moorings in a clean and tidy condition.

4.5 Not to moor or permit or suffer to be moored at the Mooring Point any houseboat or any craft used as a residence or any craft other than the Vessels.

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4.6 To keep the Vessels or to ensure that the Vessels are kept in a sound and watertight condition.

4.7 Not to moor the Vessels so as to be less than 10 metres from the edge of the dredged channel.

4.8 To ensure that when moored the Vessels are adequately secured with suitable mooring lines.

4.9 To mark all Moorings and buoys at the Mooring Point with the Licence Number.

4.10 Not to do anything which may interfere with the carrying on of ABP's undertaking or which may otherwise cause nuisance annoyance or inconvenience to ABP or other users of the River Orwell.

4.11 To comply with all applicable laws, including bye-laws, and all directions given by ABP's Harbour Master.

4.12 Not to assign, underlet or part with the Licence hereby granted.

4.13 If required in writing by ABP, to remove the Moorings to the reasonable satisfaction of ABP immediately before the expiration or earlier ending of this Licence.

5. Liability

5.1 ABP does not accept any liability whatsoever in respect of any damage to any Vessels or any other craft, or any person or property which may arise out of or in connection with this Licence, other than in respect of death or personal injury caused by ABP's negligence.

5.2 ABP is not responsible for the safety or custody of the Vessels.

5.3 Without prejudice to Condition 5.4 or any other rights or remedies ABP may have pursuant to this Licence or otherwise, in the event ABP's Harbour Master considers that any vessel at the Mooring Point or which has broken adrift from the Moorings, or the wreck of such vessel or any Moorings has or is likely to become a danger to navigation, ABP may remove and/or salvage the Moorings, vessels or wreck and recover all of its cost and expenses for doing so from the Licensee.

5.4 The Licensee agrees to be responsible for and to release and indemnify ABP and its employees and agents from and against all liability and expense which would not have arisen but for the grant of this Licence except where caused by the negligence of ABP or its employees or agents.

6. Insurance

6.1 The Licensee shall ensure that it has adequate insurance in place to meet its liabilities hereunder, such insurance shall include third party liability insurance for a minimum of £1 million.

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7. Termination by ABP

7.1 Without prejudice to any other rights or remedies it may have against the Licensee, ABP may terminate this Licence in the event of:

(a) any sum payable under this Licence being unpaid 28 days after its becoming due;

(b) a material breach of any of the Conditions contained in this Licence that is incapable of remedy;
or

(c) the Licensee not remedying any breach, lack of observance or performance of any of the Conditions contained in this Licence within 21 days of ABP giving written notice of its requirements for remedy to the Licensee.

This document will take effect on the date stated at the beginning of it.

Signed for and on behalf of

ASSOCIATED BRITISH PORTS

Signature

Print name

Date

Signed for and on behalf of

Babergh District Council

Signature

Print Name

Date

Signed for and on behalf of

PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY

Director

Signature

Print name

Date

Secretary

Signature

Print name

Date

Objections to propped Local Plan.

Policy LP10 is unsound and legally noncompliant. Each and every listed item is unlawful. Babergh District Council has no powers to render an unlawful act lawful. The Council in making provision for the mooring of houseboats is acting beyond its powers as the area concerned is in the ownership of another local authority namely Ipswich Borough Council and the area is also within the Port of Ipswich which is wholly controlled by laws which render it illegal to moor any residential craft on the river between Stoke Bridge Ipswich and Shotley Point. The Policy is a violation of law.

Associated British Ports (ABP), are the custodian, of the River Orwell and the river is owned by Ipswich borough Council on behalf of the citizens of Ipswich,

Babergh District Council are the planning Authority for the south bank of the River Orwell.

Babergh DC fail to observe and fail to enforce the environmental laws which apply to the River Orwell, in addition they fail to protect the environment and neglect their responsibilities for public health by permitting the discharge of sewage effluent into the waters of the River Orwell

The River Orwell forms part of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site which are European designated sites (also commonly referred to as Natura 2000 or N2K sites) afforded protection under the Conservation of Habitats and Species Regulations 2017, as amended (the 'Habitats Regulations'). These sites are also underpinned at the national level as the Orwell Estuary Site of Special Scientific Interest (SSSI).

Babergh DC is responsible for the adverse effects on the integrity of the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site and the Orwell Estuary Site of Special Scientific Interest (SSSI). By allowing the creation of an unlawful encampment of thirty to forty vessels to be used for residential purposes, contrary to all the laws both statutory and Byelaws which apply to the River Orwell as set out within this document.

Babergh DC is responsible for the contamination of this site by allowing the unlawful continuous discharge of sewage effluent into the river from these vessels, into and onto the mud of the foreshore at Pin Mill. The discharge of this sewage not only has adverse effects on the environment but also puts the health of the general public who live, or use this area for work or use the area for recreational purpose, at unnecessary risk.

Babergh District Council has acted and is still acting beyond the powers they possess by including within the local plan, the provision for 28 houseboats on the River Orwell at Pin Mill. In doing so the Council is abusing the Council's position and authority. The allocation of land for residential vessels to moor/berth on land which belongs to another public authority, namely, Ipswich Borough, without the permission of the said authority is in reality theft of land and therefore a criminal offence, contrary to the Theft act 1968.

Babergh District Council as the planning authority for the said land and therefore in my view a trustee of this land, any assumption by Babergh DC of the rights of an owner for what is an illegal purpose amounts to unlawful appropriation of the land and is therefore theft.

Babergh has no ownership of the river or the submerged land beneath it. The Council has no power to grant any vessel of any description permission to be in the river or to moor/berth in the river and no power to authorise the laying of any mooring, no power to authorise any construction on the river, no power to authorise any mooring of any vessel in the river and no power whatsoever to allow Houseboats of any description to be in or on the waters of the Port of Ipswich.

Section 12 of the Ipswich Dock Act 1950 enables the Ipswich Harbour Authority (ABP) to prevent, or to permit, anyone from laying down new moorings, or from maintaining and using existing moorings.

Section 13 enables the Port authority to prevent anyone - including the owners of the river Ipswich Borough or anyone licenced by the Borough - from mooring or keeping a houseboat on the river.

Section 13(2) provides that: It shall not be lawful without the written consent of the Commission to moor, place, keep or maintain in the port any houseboat, whether or not the same shall have been so placed or moored before the passing of this Act."

Section 13(4)(a) gives the Commission power to remove or demolish any houseboat in respect of which it has given a notice to remove which has not been complied with.

Section 16 gives the commission the right and duty to remove sunk, stranded and abandoned vessels from the river and to recover costs from the owners of the vessels if known.

These provisions in the 1950 Act have survived the enactment of subsequent legislation relating to the Commission and the Port Authority, un-repealed and unaltered.

The Appeal Court Judgement of Ipswich Borough v Moore & Duke 2001 confirmed that only ABP has the power and authority to grant any form of moorings in or on the river.

Babergh DC by assuming such authority, acts contrary to law and acts in contempt of parliament, statutory law and the Appeal court.

Babergh District Council acts in breach of the following Port Of Ipswich Byelaws:-

19. No vessel or other obstacle to navigation, shall be sunk or laid in any part of the harbour, nor shall any person from any cause whatsoever, leave an anchor or obstacle so as to endanger or impede the navigation of any vessel.

23. (a) No person shall lay down any mooring, buoy or similar tackle without a license or prior consent in writing of the Harbour master or where applicable Ipswich Borough Council and save in accordance with such conditions and directions as the Harbour Master or Ipswich Borough Council shall impose.

80. No vessel moored in the Authority's area (other than a vessel bona fide used for navigation) shall be used for the purposes of residence unless it is berthed alongside a frontage, where there is direct access from the shore by agreement with the owner of the frontage.

Discharging or Dumping of Materials, Substances

82. No person shall deposit or throw into the water of the harbour or any dock or lock or part thereof or in any part of the river within the Authority's jurisdiction any rubbish or other material substances or fluid whatsoever or place in it a position that it can fall, blow or drift into the same. I am informed that ABP are claiming they have no authority over Pin Mill and that they continue to deny their responsibilities for the complete shambles at Pin Mill. If that is true then the representative

The Port of Ipswich Byelaws contains the following statement:

"These byelaws shall apply throughout the area of jurisdiction of the Authority comprising of the Port of Ipswich as defined in section 3 (1) of the Ipswich Dock Act 1971".

Section 3(1) of the Ipswich Dock Act 1971 states: Port means the port, harbour and dock of Ipswich and ANY PART OF THE RIVER between Stoke Bridge and Fagborough Cliff.

Babergh DC acts in contradiction of the planning laws by allocating places on the river for residential boats which require planning permission, in addition to permission from the land owner and written permission from the Port Authority. Planning permission cannot be granted as such permission requires provision for sewage and full compliance with environmental laws as the area is a Ramsar conservation area, an AONB and a triple S & I area.

Babergh DC also acts in contradiction of the 2006 Local Plan by the failure to enforce the requirements of the Local Plan which include that the vessel shall retain the appearance of a boat and be river/sea worthy and other factors. None of the alleged houseboats comply with the conditions of the local plan.

Babergh DC has created the Unlawful Encampment, as the area allocated for these residential vessels, now has the appearance of a squalid shanty town of make-shift buildings on rusting hulls that are so full of water and/or concrete they could not float. All sit on the mud of the foreshore surrounded by the residents own excrement. Most if not all, would sink in deeper water. Few if any are of a standard which would render the vessel fit to moor in any water authority area such as Norfolk broads, Anglian waterways, British waterways and canals, the Thames Estuary and many more. It is doubtful that any have a boat safe certificate, gas safe and fire safe certificates. None have an authorised mooring therefore none can be insured.

None have provision for sewage disposal other than to tip the effluent onto and into the mud of the foreshore. The situation is reminiscent of the Great Stink of 1858 when untreated sewage lined the banks of the Thames and was thought to transmit contagious diseases and was responsible for three outbreaks of cholera. The idea that the effluent is washed out to sea is nonsense. The houseboats sit in very shallow water which only surrounds the vessels for a maximum of 4 hours a day and only on spring tides. There is no tidal flow to wash it away.

The sewage remains in the mud and has built up over the years to enormous proportions of the surrounding mud of the foreshore.

It is an outrageous situation which would not be allowed on a caravan site or on an estate of houses. If any such estate camp site or caravan site existed in any part of the country, on land to which the public have a rightful access and use and the occupants of the estate or site dumped all sewage waste onto the surrounding land there would be a public outcry and immediate action from all the public authorities. That is the situation in Pin Mill created by Babergh DC.

Those responsible for this should be held to account.

Babergh DC, are criminally responsible for the destruction of Pin Mill Bay as the area of outstanding natural beauty it once was. Babergh DC deny their legal responsibilities to protect the area as a Triple S & I. and should face prosecution for criminal acts and held to account before the courts.

Nobody in Babergh DC has taken any positive action, to prevent the above describe offences and breaches of the law from happening, although the District Council has all the necessary powers required to enforce the law.

The corporate behaviour of the Council has an adverse impact on the members of the paying public as the Council Officers and elected members of the Council are not acting in the interests of the rate payers. The current policy of doing nothing is financially unsustainable and amounts to criminal neglect of public duty.

ABP is the only body that can licence and permit any vessel to moor in or on the River Orwell. ABP issues mooring licences to all the honest users of the river, with strict conditions attached.

These conditions include: Condition 3.1.1: The licence does not authorise: The discharge or running off into the River Orwell from any boat moored in the river of anything other than unpolluted surface water draining naturally.

Condition 4.5: The licensee agrees to: Not to moor or permit or suffer to be moored at the mooring any houseboat or craft used as a permanent residence

Condition 4.11: To comply with all applicable laws, including bye laws, and all directions given by ABP's Harbour Master.

Condition 6.1: The licensee shall ensure that it has adequate insurance in place to meet its Liabilities hereunder, such insurance shall include third party indemnity insurance for a minimum of £1 million.

All licensed vessels have to comply with these conditions or face eviction from the river. Therefore all unlicensed vessels which includes all houseboats, are also obliged in law to comply with the same conditions and if they do not in addition to having no licence, they should face eviction from the river.

Compliance with the condition 4.11 must preclude any houseboat from mooring in the river.

“Trespass is a criminal offence for which offenders can face imprisonment. Babergh could demand the police use the powers they have to tell the owners to leave the river or face arrest and imprisonment. Instead Babergh DC have done nothing.”

There is no mention by Babergh of the complete embargo of houseboats on the river Orwell. In 1950 Parliament decided that no houseboats could be moored in the river Orwell without the written authority of the Ipswich Harbour Master. See The Ipswich Dock Act 1950 section 12 and section 13 which gives the port authority the power to destroy any houseboat that fails to move from the river when instructed to do so. Babergh make no reference to the judgement of the Appeal Court in Ipswich CBC v Duke and Moore 2001. This judgement fully supports the statutory laws and Parliaments decisions.

Only ABP has the authority to grant the laying of moorings in and on the river bed and only ABP can licence the use of the said moorings. Babergh DC by considering the issue of these planning permissions without consultation with Ipswich and ABP is aiding and abetting offences of criminality. The law is very clear on these issues and it cannot be excused by any claim of ignorance.

Section 40 of the Natural Environment and Rural Communities Act 2006, which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. The officer submitting this proposal is clearly ignorant of the extent of his/her obligations in law as set out within the following:

Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System

Please be advised that the responsibilities of Babergh for the protection of this site from pollution by sewage, cannot just be dismissed as not the responsibility of the council. Such a claim is a serious case of misconduct by a holder of public office and that is a serious criminal offence punishable by life imprisonment. All the said responsibilities are set out in the above document.

I advise reading page 20:- “A SUMMARY OF THE LEGISLATIVE REGIME GOVERNING SITES OF SPECIAL SCIENTIFIC INTEREST”

To allow pollution of this site to the extent as it is today is a very serious breach of a number of laws as the dangers of sewage within this site is well documented and the stench on a hot day at low tide is revolting.

Planning applications without any provision for the disposal of sewage and waste cannot be approved in any circumstances.

Local authorities have certain duties and powers to control “statutory nuisances” pursuant to sections 79 to 81 of the Environmental Protection Act 1990 (as amended). Various matters constitute “statutory nuisances” under this legislation. These include any premises and land that are in such a state as to be prejudicial to health or a nuisance. Something will be ‘prejudicial to health’ if it is ‘injurious or likely to cause injury to health.

The fact is that Pin Mill Bay is in all probability the most polluted foreshore in the UK and now instead of being an area of outstanding natural beauty it is more akin to an open sewer. There cannot be many sites that are more injurious or prejudicial to health than this site.

In 2006 Babergh DC unlawfully made provision within the Local Plan for the provision of 28 Houseboats at Pin Mill together with strict conditions of compliance. The Council from then failed to enforce these conditions, failed to get authority and agreement from Ipswich and ABP. Failed to licence the houseboat's or set in place any tenancy agreements, failed to set up any supervisory system, failed to provide any form of sewage and waste control's and allowed the site to become the squalid shanty town it is today. IN ADDITION the Council failed to get planning consent which with no provision for sewage disposal is unlawful.

Babergh District Council as the planning authority for the said land and therefore in my view a trustee of this land, any assumption by Babergh DC of the rights of an owner for what is an illegal purpose amounts to unlawful appropriation of the land and is therefore theft.

The law states that houseboats are like caravans they are chattels which have none of the protections given to Homes. All can be evicted by Ipswich as owners of the land and by Babergh as the planning authority.

Babergh is directly responsible for the creation of this unlawful encampment of between 30 and 40 vessels that sit on the foreshore surrounded by their own excrement and a population of rats.

Those living on houseboats are no different than travellers who live in caravans. (Thames Heliport v Tower Hamlets LBC JPL 448 decided that submerged land beneath a river is land for the purpose of planning law) Those that park without permission on private land in caravans are trespassers as are those whom live in houseboats who ground on submerged land in the river Orwell without written authority of the Ipswich harbour master. Such trespassers can be forced to move and the police have a duty to prevent any breach of the peace.

In this case the Ipswich Port Authority has the backing of the law. With the passing of the Ipswich Dock Act 1950 and the Ipswich Dock byelaws; parliament chose to specifically exclude any houseboat from using the river Orwell unless the Ipswich Harbour Master has given them written permission. Any breach of this law by the occupants of any houseboat is therefore clear evidence of trespass. Trespassers can claim no rights because no rights exist

David Fisk

DATED

5th January

2016

BABERGH DISTRICT COUNCIL

to

PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY

~~Draft~~

SUB-LEASE

of

part of the foreshore at Pin Mill, Chelmondiston, Suffolk

Esther Thornton
Corporate Manager and Monitoring Officer
Babergh District Council
Council Offices
Corks Lane
Hadleigh
Ipswich
Suffolk
IP7 6SJ

LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

LR2.1 SK344117

LR2.2 Other title numbers

None

LR3. Parties to this lease

Landlord

BABERGH DISTRICT COUNCIL of Corks Lane, Hadleigh, Suffolk, IP7 6SJ

Tenant

PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY

(company No 07436195) whose registered office is situate at 30

~~Woodlands Chelmondiston Ipswich Suffolk IP9 1DU~~ *Harry King and Sons Ltd*
Pin Mill, Chelmondiston, Ipswich, Suffolk IP9 1JN

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

The Property described in Clause 1.5

LR5. Prescribed statements etc

None

LR6. Term for which the Property is leased

The term as specified in this lease at clause 1.7 ("The Term")

LR7. Premium

None

LR8. Prohibitions or restrictions on disposing of this lease

This lease contains a provision that prohibits or restricts dispositions.

LR9. Rights of acquisition etc

None

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None

LR9.3 **Landlord's contractual rights to acquire this lease**

None

LR10. **Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

None

LR11. **Easements**

LR11.1 **Easements granted by this lease for the benefit of the Property**

None

LR11.2 **Easements granted or reserved by this lease over the Property for the benefit of other property**

None

LR12. **Estate rentcharge burdening the Property**

None

LR13. **Application for standard form of restriction**

None

THIS LEASE is made

2014

BETWEEN:

(1) **BABERGH DISTRICT COUNCIL** of Corks Lane, Hadleigh, Suffolk, IP7 6SJ
(the Landlord) and

(2) **PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY**
(company No 07436195) whose registered office is situate at 30 Woodlands
Chelmondiston Ipswich Suffolk IP9 1DU

and the provisions that follow have effect subject to the provisions contained, and terms used, in clauses LR1 to LR13

NOW THIS DEED WITNESSES as follows:

1. Definitions and interpretation

In this Lease:

- 1.1 the 'Hard' means all that timber and concrete structure and stone filled area which extends into the River Orwell from the foreshore at Pin Mill and which is referred to locally as "the Hard";
- 1.2 the 'Headlease' means a Lease dated 19 November 2012 and made between Ipswich Borough Council and the Landlord in respect of which the Landlord holds a lease of the Property for a term of 21 years from and including the 19 November 2012;
- 1.3 the 'Property' means all that piece of leasehold land (including The Hard) comprising 4.5 hectares or thereabouts registered with Title Absolute under Title Number SK344117 being part of the foreshore of the River Orwell situate at Pin Mill, Chelmondiston in the District of Babergh in the County of Suffolk;
- 1.4 the 'Rent' means one peppercorn;
- 1.5 the 'Term' means 21 years less two days from and including the 19 November 2012.
- 1.6 the 'Works' means the repairs and improvements carried out by the Landlord to the Hard between the high and low water marks together with the reconstruction of the derelict barge repair facility which works shall incorporate a landing frame and associated mooring posts;

References to:

- 1.7 The 'Headlandlord' includes the persons from time to time entitled to the reversion immediately expectant on the term granted by the Headlease;
- 1.8 the 'Landlord' includes the persons from time to time entitled to the reversion immediately expectant on the term granted by this Lease;
- 1.9 'liability' includes, where the context so allows, claims, demands, proceedings, losses, damages, costs and expenses.
- 1.10 the 'Tenant' includes the Tenant's successors in title and assigns in whom this Lease may for the time being be vested;

2. Demise

In consideration of the Rent and the covenants contained in this Lease the Works) the Landlord DEMISES to the Tenant with full title guarantee the Property TO HOLD the Property to the Tenant for the Term SUBJECT to the public rights of navigation and fishing and all other rights easements and quasi-easements now exercisable over the Property (including rights for the public to pass and repass on foot only over the Property at no cost).

3. Tenant's covenants

The Tenant covenants with the Landlord as follows:

Rent

- 3.1 To pay the Rent reserved in this Lease (if demanded.)

Rates and taxes

- 3.2 To pay all existing and future rates taxes assessments and outgoings whatever payable in respect of the Property or any part of them.

Waste

- 3.3 Not to make any alterations or additions to or affecting the Property without the consent of the Landlord.
- 3.4 Not to commit or suffer any waste spoil or destruction on the Property

Repair

- 3.5 At all times during the Term to keep the Property in good repair and condition to a standard commensurate with the condition of the Property upon completion of the Works, such condition evidenced by the schedule of condition attached to the Lease.

Entry

- 3.6 To permit the Landlord the Headlandlord and persons authorised by the Landlord and Headlandlord at all reasonable times to enter the Property to examine the condition of the Property generally and if any want or repair or defect shall be found to repair and amend it within 3 months of the receipt of notice to that effect.

Expenses of inspection

- 3.7 To pay the Landlord on demand all expenses incurred by the Landlord or any persons authorised as set out above in respect of and incidental to any such inspection and the superintendence of the execution of repairs and amendments as also set out above

Use

- 3.8 To ensure that the Property shall not be used otherwise than for the launching, recovering, mooring, maintaining and repairing vessels.
- 3.9 Nothing in this Lease implies or is to be treated as a warranty to the effect that the Tenant may lawfully use the Property for the proposed use.
- 3.10 Not to use the Property for any noxious, noisy or offensive trade or business nor for any illegal or immoral act or purpose.
- 3.11 Mooring for residential purposes shall not be permitted

Dealings

- 3.12 Not to assign, sub-let charge or otherwise deal with the whole or any part of the Property.
- 3.13 Not to part with possession or share occupation of the whole or any part of the Property.

Insurance

- 3.14 To effect and throughout the Term to keep in force a policy of insurance with a reputable insurance company, incorporating the standard conditions and exemptions of the insurance company, to cover all claims arising from the Tenant's use of the property in the amount of £5,000,000 in respect of any one claim for death, bodily injury or disease or damage to property, and must make available to the Landlord on reasonable demand a copy of the policy or a summary of its terms and a copy of the current premium receipt.

- 3.15 To pay to the Landlord the cost incurred by the Landlord for insuring the Property against the usual insured risks to its full reinstatement value and including the value of the Works.
- 3.16 To pay to the Landlord the cost incurred by the Landlord in procuring and maintaining a title indemnity insurance policy in respect of any third party claims for loss of amenity or infringement of common law rights or otherwise in respect of the Hard or the Property and resulting from the Tenant's use of the Property.

Statute

- 3.17 To comply in all respects with all statutes for the time being in force and requirements of any competent authority relating to the Property or anything done in or on them by the Tenant, and to indemnify the Landlord against liability by reason of failure to comply with them.

Indemnity

- 3.18 To indemnify the Landlord against all third party claims howsoever arising.
- 3.19 To keep the Landlord indemnified against liability for which the Landlord may be exposed by reason of breach of the Tenant's obligations in this Lease.

Yield up

- 3.20 At the expiry or earlier determination of the Term quietly to yield up the Property (with all additions and improvements to the Property and all fixtures which during the Term may be fixed or fastened to or on the Property other than tenant's fixtures which the Tenant may be entitled to remove) repaired, maintained, cleaned, decorated and kept in accordance with the Tenant's covenants in this Lease.

Encroachments and easements

- 3.21 Not to permit any encroachment on the Property, nor to permit any easement to be made or acquired into or against the Property;

Breach of the terms of the Headlease

- 3.22 The Tenant must not do, omit, suffer or permit in relation to the Property any act or thing that would or might be inconsistent with or cause the Landlord to be in breach of the Headlease or that if done, omitted, suffered or permitted by the Landlord would or might be inconsistent with or constitute a breach of the covenants on the part of the tenant and the conditions contained in the Headlease.

4. Re-entry

If there shall be any breach of any of the Tenant's covenants or the conditions contained in this Lease or if the Tenant shall (not being a company) have a bankruptcy order made against it or (being a company) be wound up or go into liquidation except for the purpose of reconstruction or amalgamation or (in either case) enter into any arrangement or composition for the benefit of creditors or suffer any execution to be levied on the leasehold interest in the Property or any distress or execution to be levied on the Tenant's goods the Landlord may re-enter and retain possession of the Property as fully and effectually in all respects as if this Lease had not been granted without prejudice to the rights and remedies of the Landlord for any breach of the Tenant's covenants or the conditions contained in this Lease

5. Notices

Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to any notices required or authorised to be given under this Lease

6. Contracts (Rights of Third Parties) Act 1999

The provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from this Lease.

7. Landlord and Tenant Act 1927

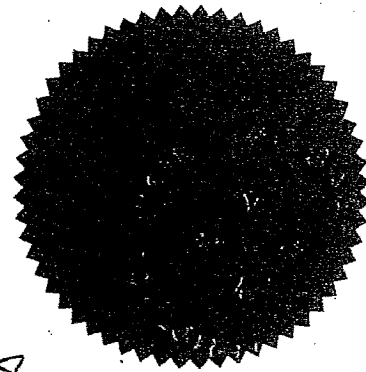
The Landlord and the Tenant agree and the Tenant acknowledges that the Works required to be completed by this Lease are not qualifying improvements for the purposes of the Landlord and Tenant Act 1927.

8. Unfit Property

In the event that the Property becomes unfit for occupation or use during the Term for any reason, the Landlord shall be under no obligation to repair the Property or otherwise make the Property fit for occupation or use.

IN WITNESS of which the parties have executed this deed the day and year first above written

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of)
BABERGH DISTRICT COUNCIL)
in the presence of)



C. W. [Signature] 184

13/14

Authorised Officer

~~EXECUTED AS A DEED by affixing)~~
~~THE COMMON SEAL of)~~
~~PIN MILL BAY MANAGEMENT)~~
~~COMMUNITY INTEREST COMPANY)~~
~~In the presence of)~~

Director

~~Secretary~~

DATED

30th December 2015

IPSWICH BOROUGH COUNCIL

and

BABERGH DISTRICT COUNCIL

and

PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY

LICENCE TO UNDERLET

relating to

PART OF THE FORESHORE (INCLUDING THE HARD) AT PIN
MILL, CHELMONDISTON, IPSWICH

This licence is dated

30th December 2015

HM Land Registry

Landlord's title number: SK297604

Administrative area: Ipswich

Tenant's title number: SK344117

Administrative area:

PARTIES

- (1) IPSWICH BOROUGH COUNCIL of 15-17 Russell Road, Ipswich, Suffolk, IP1 2DE (Landlord).
- (2) BABERGH DISTRICT COUNCIL of Corks Lane, Hadleigh, Suffolk, IP7 6SJ (Tenant).
- (3) PIN MILL BAY MANAGEMENT COMMUNITY INTEREST COMPANY (company registration number 07436195) whose registered office is at 30 Woodlands, Chelmondiston, Ipswich, Suffolk, IP9 1DU (Undertenant).
Harry King and Sons Ltd, Pin Mill, Chelmondiston, Ipswich, Suffolk, IP9 1JN

BACKGROUND

- (A) This licence is supplemental and collateral to the Lease and Underlease.
- (B) The Landlord is entitled to the immediate reversion to the Lease.
- (C) The residue of the term granted by the Lease is vested in the Tenant.
- (D) The Tenant intends to underlet the Property and, under the terms of the Lease, requires the consent of the Landlord to grant the Underlease.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this licence.

1.1 Definitions:

Lease: a lease of Part of the Foreshore at Pin Mill, Chelmondiston, Suffolk dated 19 November 2012 and made between Ipswich Borough Council (1) and Babergh District Council (2).

Property: Part of the foreshore (including the Hard) at Pin Mill, Chelmondiston, Ipswich, Suffolk as more particularly described in and demised by the Lease.

Underlease: an underlease of the Property to be entered into between the Tenant (1) and the Undertenant (2).

1995 Act: Landlord and Tenant (Covenants) Act 1995.

- 1.2 References to the **Landlord** include a reference to the person entitled for the time being to the immediate reversion to the Lease. Except in the definition of **Underlease** and in clause 2 and clause **Error! Reference source not found.**, references to the **Tenant** and the **Undertenant** include a reference to their respective successors in title and assigns.
- 1.3 The expression **tenant covenants** has the meaning given to it by the 1995 Act.
- 1.4 Clause and Schedule headings shall not affect the interpretation of this licence.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes fax but not e-mail.
- 1.11 A reference to this licence or to any other agreement or document referred to in this licence is a reference to this licence or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this licence) from time to time.

1.12 Unless the context otherwise requires, references to clauses and Schedule are to the clauses and Schedule of this licence.

1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. CONSENT TO UNDERLET

2.1 In consideration of the obligations of the Tenant and the Undertenant in this licence, the Landlord consents to the grant of the Underlease by the Tenant to the Undertenant.

2.2 This consent is valid for three months from and including the date of this licence. If the Underlease has not been granted within that time, the Landlord may give notice to the Tenant extending the period of validity. If this consent ceases to be valid and the Landlord has not given notice extending its validity, all the terms of this licence except clause 2.1 shall remain in force.

2.3 This consent does not obviate the need for the consent or licence of any person other than the Landlord that may be required for the grant of the Underlease.

2.4 The Underlease shall be in the form of the draft annexed to this licence

3. OBLIGATIONS RELATING TO THE UNDERLEASE

3.1 Within one month after the grant of the Underlease, the Tenant shall:

- (a) notify the Landlord of the grant; and
- (b) send a certified copy of the Underlease to the Landlord;

3.2 The Tenant shall enforce the tenant covenants of the Underlease and not release any of them nor waive any breach of them.

3.3 The Tenant shall not vary the terms of the Underlease nor accept a surrender of the Underlease without the consent of the Landlord, such consent not to be unreasonably withheld.

3.4 The Tenant shall not reduce, accelerate or commute any rent payable under the Underlease nor take any other step that may restrict the Landlord's statutory powers to collect the Underlease rents.

3.5 The Undertenant covenants with the Landlord that at all times when the Undertenant is bound by the tenant covenants of the Underlease the Undertenant shall:

- (a) pay the rents reserved by the Underlease and observe and perform the tenant covenants in the Underlease and not suffer, permit or omit to do anything at or in relation to the Property or the Underlease that will or may constitute a breach of those tenant covenants; and
- (b) observe and perform the tenant covenants in the Lease except for the covenant to pay the rents reserved by the Lease and not do, suffer, permit or omit to do any act or thing at, or in relation to, the Property that would, or might, cause the Tenant to be in breach of any covenant or condition in the Lease, or that if done, suffered, permitted or omitted by the Tenant, would, or might, constitute a breach of any covenant or condition in the Lease.

4. THE RIGHT OF RE-ENTRY IN THE LEASE

The right of re-entry in the Lease shall be exercisable if any covenant or condition of this licence is breached, as well as if any of the events stated in the provision for re-entry in the Lease occurs.

5. INDEMNITY

The Tenant and the Undertenant shall indemnify the Landlord against all liabilities, costs, expenses, damages and losses suffered or incurred by the Landlord arising out of or in connection with any breach of the terms of this licence.

6. NOTICES

Any notice given under or in connection with this licence shall be in writing and shall be delivered by hand, or sent by pre-paid first class post, or other next working day delivery service or by any other means permitted by the Lease. A correctly addressed notice delivered by hand shall be deemed to have been delivered at the time the notice is left at the proper address. A correctly addressed notice sent by pre-paid first class post or other next working day delivery service shall be deemed to have been delivered on the second working day after posting.

7. LIABILITY

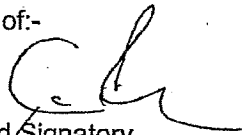
The obligations of the Tenant and the Undertenant in this licence are owed to the Landlord and are made in consideration of the consent granted by clause 2.1.

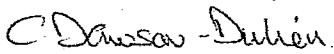
8. THIRD PARTY RIGHTS

A person who is not a party to this licence shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this licence.

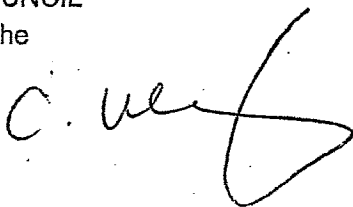
This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The COMMON SEAL of
IPSWICH BOROUGH COUNCIL
Was affixed as a deed in the
presence of:-


Authorised Signatory


Authorised Signatory

The COMMON SEAL of
BABERGH DISTRICT COUNCIL
Was affixed as a deed in the
presence of:-


Authorised Signatory

Executed as a deed by PIN MILL
BAY MANAGEMENT
COMMUNITY INTEREST
COMPANY acting by
a director and its secretary


Director


Secretary