

Lido Project Executive Summary

Background

Deputy Tom Binet as Minister in charge of Jersey Property Holdings (JPH) asked [REDACTED] in [REDACTED] personal capacity to undertake a review of all the correspondence between JPH as landlord of the Lido represented by their Director General- Tim Daniels (TD) and their tenant The Lido (Havre de Pas) Ltd represented by [REDACTED]

The terms of reference were agreed in a formal mediation agreement dated 25th Jan 2023 and signed by both parties (see appendix A).

Furthermore, both parties agreed to provide [REDACTED] with a detailed summary and supporting documentation by Friday 3rd March. Whilst full information was received by [REDACTED], this was not the case with JPH who had to be chased on two occasions, this being received 21st March however there were material gaps.

Detailed chronology and summary of relevant correspondence can be seen in Appendix B

Meetings were held w/c 20th March with all related parties and also the Connetable of St Helier (see file notes Appendices C-E). Additional information was requested of IHE and received 29th March.

[REDACTED] initial draft observations (Confidential to the Minister)

This is a site that is clearly unique and of great importance to the island both locals on an all year-round basis (cold water swimming etc) and also as one of the key attractions for visitors to Jersey.

Given this is a Victorian building in the sea however, it is unlike any normal commercial asset and for it to work as a public space and a commercial business this would require a real partnership between Govt and the private sector that was very clear in repair and maintenance obligations as well as terms for operation ie events.

It was clear that the desire of EDTS&C when inviting parties to bid for the Lido lease that the site should continue to be used both for local islanders recreation and also used to promote the island for visitors. It was the Visit Jersey CEO who suggested using the site more regularly for Event space and expanding to the shoulder months etc. The previous tenant had also run events from the site.

As such the bid from [REDACTED] and [REDACTED] team was the preferred choice, providing year round café and event space.

Whilst all discussions with [REDACTED] were held with the Sports team in EDTS&C the formal lease was with JPH as landlord. The formal lease was duly signed on 2nd Oct 2019 (see Appendix F). Key aspects of the lease were as follows:

- 9 year but with mutual break options [REDACTED]
- Clause 2.6- Public and Private Event 'the tenant may from time to time hold public or private events...'
- 3.3 'to make reasonable endeavours to keep the premises wind and watertight (it being acknowledged that due to the nature of the complex this cannot be guaranteed) and in reasonable state of structural repair which may be necessary during the term

In my view the lease is poorly drafted and the phrase 'best endeavours' is highly subjective, hence the clear disagreement between the parties that has resulted in the breakdown in relations we have since seen.

Clearly significant expense was then put into the building improvement by the business at the outset and subsequent events such as the Visit Jersey marketing launch were highly successful. The internal work from my site visit was well done at the time and reflects well on what all parties were aiming to achieve at the outset.

The business however did fail to get planning approval for the internal partitions . This was a requirement purely because of the protected status of the site (i.e. in normal course this wouldn't have been required). This was a genuine mistake on the part of the business, they are now seeking retrospective planning however their application has been held up awaiting JPH's approval. The planning officer when they conducted a site visit acknowledged this was a very minor issue and saw no difficulties at all in issuing retrospective approval but they would require the landlords consent.

Based on the meeting with [REDACTED] and supported by email correspondence, the following are key points:

- From the outset the business was told that all discussions and admin would be directly with the Sports Dept and no mention was made of JPH's involvement, albeit for legal purposes they signed the lease as landlord on behalf of Sports (who retained the responsibility for maintenance of the public areas and lifeguards).
- There was an agreed process for the approval of public and private events, which whilst somewhat admin heavy, worked for a number of years with no material issues according to [REDACTED]. This involved the business sharing their 12 month bookings and then on each event formal approval subject to agreed documentation/ risk assessments etc.
- Throughout this period however there were numerous occasions of rainwater ingress from the roof/stairs which caused damage to the internal areas. On each occasion photographic evidence was provided to Sports who in turn forwarded these to JPH. Critically this water ingress (in the main) was not the result of high tides/ storm surges but rainwater. From my site visit seeing the cracks on the roof and stairs I would support that assertion and this is also referenced by Currie & Brown when they did their report.
- Sports advised the business that JPH have said to them that there was no budget for this repair work.
- There was no agreed maintenance program and in fact [REDACTED] states that there has been no substantial or effective repair of the roof at all.
- [REDACTED] was advised by various parties (including senior politicians) to delay paying rental until the roof issues were fixed.
- Agreement with JPH that they would fix the stair issue (this was causing the worst water ingress) provided [REDACTED] paid the rent arrears of [REDACTED]. The arrears were paid but no work was done by JPH
- When private events necessitated closing access to the public, this was well managed with the local swimmers/ residents. This view was corroborated by the Connetable of St Helier.
- Prior to JPH taking over day to day responsibility the use of the public toilets during winter was facilitated by Sports giving the tenant a key, this worked well. JPH deny this was the case from their enquiries.

Based on the meeting and the correspondence from JPH, the following are key points:

- Consistent concern that works by the tenant were not up to all requirements/ approvals, issues with the purported leased areas shown in licensing applications, arrears of rent issues, events at times when the rest of the Lido was shut down for winter and concern over public areas being used for private events, all built up to a view that this relationship was broken.

- Detailed professional report from Currie& Brown 15th March 2020 (see Appendix G), clearly articulates the issues and challenges with this site. They estimate [REDACTED] of expenditure being required to bring the site up to the standard that would be required for the public and private purposes the business and JPH/ Sports.
- JPH state to the tenant on numerous occasions they believe they have complied with their obligations under clause 3.3 of the lease. They reference a spend of [REDACTED] over 4 years on reactive and general maintenance on the premises/ complex. They compare this to the [REDACTED] rental. JPH however are not able to demonstrate in any detail what this spend covered and what element was for the area under lease and what was for the public areas (ie not subject to the lease). In my view and based on correspondence, C&B report and recent site visit, they have not demonstrated that they have used their 'best endeavours' to adequately maintained the roof/ stairs. I do not believe that there was a clear and agreed maintenance program to reflect their obligations as landlord even allowing for the weakness in the wording I alluded to previously.
- They confirm that on every occasion the tenant has raised water ingress issues, they or Sports have always responded and taken appropriate action. No evidence of this has been provided to me and from what I've seen on site this is not a building that is being maintained adequately.
- Detailed briefing note to Minister Appendix H (undated) Feb/ March 2020 shows their concern over the site and how the cost of maintenance in order to allow a business like [REDACTED] to operate is in their view prohibitive. Their recommendation was to exercise the break option and then use the building purely as a food kiosk in the summer months under license with a private sector operator.
- New lease sent to the tenant 14th July 2021, but this has serious flaws and again does not deal adequately with on-going maintenance. Specifically, there are key issues namely i) term only for 3 years, ii) restrictive covenants re events (e.g. excluding valuable Xmas period) and iii) any maintenance to be subject to JPH's budgetary constraints. In my opinion, this is not a commercial lease I would recommend any business enter into.
- JPH need to see the building byelaw approval for the original fit out works that the tenant undertook without any landlords approval which they believe is the cause of some of the wiring issues. Without the original approval, they do not see how further works can be considered
- Very clear that JPH based on the challenge of the site that their preference as asset managers is that they should seek vacant possession, undertake works on electrics and fire safety, find an operator for the beach café concession and then allow the site to be bid for specific hospitality events, for which [REDACTED] would be welcome to apply.

[REDACTED] interim conclusion

- This is a site of significant importance to the island, however it will always have real and on-going challenges to maintain both the swimming facilities and event space during the winter months.
- It is clear from what I've seen and heard that JPH are managing this asset strictly in accordance with the lease agreement and that they do not believe that the site can and should be used for Events during the winter. They clearly have a limited budget for any maintenance hence why in their proposed new lease they put a clause in that any maintenance has to be subject to funds being available.

- The asset is not being managed by JPH in the spirit with which all parties entered into the lease, but equally the tenant has not helped through delays and holding back rent (albeit they were often getting political support for these actions)

recommended action

- **Short term** ie say through to end Jan 2024- we need to i) allow the tenant to operate pending a final agreement and ii) ensure that JPH are satisfied on all fire/ electrical and health and safety issues, taking account of the short-term operating requirements of the business and iii) complete essential roof/ stair repairs. The lease payments from the tenant (as per prior agreements) should also be reinstated.
- **Medium/ long term**, Currie & Brown should be instructed to update their report and the various options reviewed. Aim should be to agree the detailed works required and then the on-going maintenance programme. Based on this a commercial lease [REDACTED] should be drafted/ negotiated. The funding of the works and the resultant commercial lease option may well require to go to the States as a proposition, given this site will always require public funds (over and above any lease payments) for it to be maintained for both public and commercial uses. My recommendation is that this should be run as a separate project with the recruitment of a project manager with appropriate property/ asset management experience