

## What size boat can I put on my Posol berth ?

Although referred to as an 11 metre berth this figure relates to the size of the berth, not to the size of the boat.

The documents which govern the Posol berths are the Underleases, which cover all the Posol berths and the individual Sub-Underleases which are specific to each berth. Unfortunately the solicitor who originally wrote these documents was incompetent and Posol has had to take legal advice to interpret the anomalies.

In the following, any text in *italics* is copy taken straight from the legal document in question.

Most Posol berths are accessed via a pontoon and the boat is moored at right angles to the marina wall. The descriptions below all relate to this type of berth. The words length and width should be transposed as appropriate when considering an “alongside” berth.

### **Berths**

Each berth is defined by a line on a map included in the Sub-Underlease for that berth. This line traces out the boundary of the berth. Unfortunately this is a smudgy line drawn on a small scale map and it is not reasonable to measure the paper map and to scale up to find the exact dimensions of the berth.

However the lines determining the width of the berths are extensions of the lines which mark the boundaries between the houses. Therefore the berth is the same width as the house to which it is attached, and it is in line with the house. A narrow house will have a narrow berth.

For remote berths where neither berth is in line with a house the dividing line between the berths is equidistant from each pontoon.

There are a very small number of exceptions to the above, notably where a remote berth shares its water space with an end of terrace house. Examination of the plans is required in these special cases.

As far as the Sub-Underlease is concerned the part of the line which determines the length of the berth is an ill defined position. For the length of the berth it is necessary to refer to the map included in the Underlease. Although this is again a smudgy line drawn to a small scale, this map is annotated with a specific dimension; 11 metres. Therefore the length of every berth is 11 metres.

The pontoon itself is owned by Posol and is not included in the lease. Surprisingly the Sub-Underlease does not give the berth-holder any legal right of way to use the

pontoon but the absence of any such right would frustrate the use of the berth and such a right may be assumed by default.

It should be noted that the pontoons take up some space and the width of water available for a boat is diminished by the width of the pontoon itself.

The relevant extract from the Sub-Underlease is:

*“the Berth”*

*means the land forming the bed of the Marina and the water space and the air space above the bed of the Marina as is shown edged in blue on the principal plan annexed hereto and is known by the berth number specified in paragraph (4) of the foregoing Particulars and for the removal of doubt this demise shall exclude any part of the Pontoonery.*

### **Boats**

The Sub-Underlease includes the clause: *The Lessee hereby covenants with the Lessor as follows:- ....not at anytime during the Term to use or permit or suffer the berth or any part thereof to be used for any purpose other than for the mooring of one Vessel of an appropriate size for the Berth.*

The word “appropriate” is indeterminate and in the case of any dispute a Court adjudication would be needed. While it is reasonable to presume that the Queen Mary would be inappropriate at the other end of the scale a judge would most likely say that as the Lessor did not bother to impose a specific dimension then the Lessor cannot subsequently nit-pick on the dimension. Whether the judge would regard a few millimetres, a few centimetres or even one metre as nit-picking is a risk a complainant would have to take before embarking on an expensive court action.

Posol considers the above to be a meaningless clause.

Part 1 of the First Schedule of the Sub-Underlease records the Rights granted to the Lessee. Para 1 states: *The right to moor a Vessel within the Berth to the part of the Pontoonery adjacent to the Berth.*

The significance of this paragraph is more in what it doesn't say rather than what it does say. If it had said “moor a Vessel wholly within the berth” that would have signified that the boat could not extend beyond the limits of the berth. By omitting the word “wholly” the boat is not so restricted, but neither is it authorised to extend outside the berth.

The import of this clause is primarily that the boat has to be moored in the designated berth and not somewhere else in the marina.

From the above it will be seen that the Lease agreement has no meaningful definition of the size of the boat.

Despite the use of the berth being restricted to one vessel Posol has accepted that a floating pontoon used as an aid to mooring one vessel does not itself constitute a second vessel.

**Considerations in respect of boats which are too big to fit within the boundaries of the berth.**

**A boat which is too wide to fit into its own berth** will trespass into a neighbour's berth. Just as it would be unreasonable to park a car on a neighbour's front garden then it is equally unreasonable for part of a boat (including its fenders) to extend into the neighbour's berth.

Where such trespass does occur this is a dispute between neighbours and that the issue should be resolved by the neighbours.

If the neighbour is content for the trespass to continue it is suggested that a license is signed by both parties accepting the trespass. Such a license should be for one year and should be non-renewable (parties may renew each year if they choose, but each license is not self renewing). The license must state that it is automatically terminated on the sale of either house/berth and it is recommended that it should terminate at the request of either party subject to 30 days notice (this is important as the house/berth could not be sold with "vacant possession" if there was a permanent trespasser).

**A boat which is too long to fit into its own berth** will trespass into water leased to Premier Marinas.

Owners of boats in longer than 11 metres may seek a concession from Premier Marinas. Such a concession will not be granted if the excess length of the boat interferes with the free navigation of other boats (e.g. in an inside corner berth).

Premier are unlikely to give a concession for boats exceeding 11.3 metres.

Note: at one time longer boats were accepted by Premier. Where a specific boat was accepted under this previous arrangement it may continue to be moored on the designated berth indefinitely. However any new boat, replacing the approved boat, will not benefit from the historic approval and will therefore be limited to 11 metres.

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