

DELEGATED OFFICER REPORT

Site Address:	Boatyard, Marine Walk, Hayling Island, PO11 9PG		
Proposal:	Extension to existing pontoons.		
Application Type:	Full Planning Permission		
Application No:	APP/22/00822	Expiry Date:	12/10/2022
Applicant:	Mr Wilson		
	Wilsons of Hayling Ltd.		
Agent:	Mrs Roberts	Case Officer:	Denise Sheath
	Critchley Architecture And		
	Design (CAAD) Ltd		
Ward:	Hayling East		

Recommendation: **GRANT PERMISSION**

1 Site Description

- 1.1 The application site is located in 'My Lord's Pond' at the Northern point of 'Wilson's Boatyard', north of Marine Walk.
- 1.2 The application site is located within Chichester and Langstone Harbours Special Protection Area (SPA), the Chichester and Langstone Harbours Wetland of International Importance under the Ramsar Convention (Ramsar site), the Solent Maritime Special Area of Conservation (SAC), Chichester Harbour Site of Special Scientific Interest (SSSI) and the Chichester Harbour National Landscape (formerly Area of Outstanding Natural Beauty).
- 1.3 The existing pontoon is above the 'Mean Low Water' mark and therefore outside of Crown Land. However, the existing pontoon is located outside the ownership boundary of the Applicant. Notice 1 has been served on the relevant owner, as per the details in Certificate B.
- 1.4 The site falls within Flood Zones 2 and 3, and future flood zones.

2 Planning History

93/51187/003 - New boatshed with office. (Renewal of Planning Permission 88/51187/2)., PERM,11/11/1993
05/51187/004 - Erection of a pontoon adjacent to and the east of the existing slipway., WD,31/05/2005
05/51187/005 - Erection of a Pontoon adjacent to and east of the existing slipway. (Resubmission)., PERM,02/08/2005
APP/10/00953 - Construction of Sea Defence Works. (Retrospective application.), PERM,03/03/2011
APP/11/01268 - Discharge of Condition No. 1 of Planning Permission APP/10/00953., REF,24/10/2011
APP/20/00725 - Proposed extension to an existing pontoon., PERM,26/01/2021

3 Proposal

- 3.1 The proposal comprises the installation of a new main pontoon running to the east from the existing main pontoon approved under planning references 05/51187/005

and APP/20/00725 with No.5 finger pontoons extending northwards. An existing single pontoon providing access to the swinging moorings would be removed. The new pontoon would be constructed from extruded aluminium frames with a hardwood slat surface. Four new locating poles with vertical guides would be used to locate the pontoon, which otherwise would rise and fall with the tide.

- 3.2 There would be cast aluminium deck cleats at intervals along the edge of the pontoon. Floats would be manufactured from preformed marine grade polyethylene with polystyrene bead infill, to maintain flotation, in the event of damage to the outer casing.

4 Policy Considerations

National Planning Policy Framework

Havant Borough Council Borough Design Guide SPD December 2011

Havant Borough Council Parking SPD July 2016

Chichester Harbour Area of Outstanding Natural Beauty SPD 2017

Chichester Harbour Area of Outstanding Natural Beauty Management Guidelines

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS12	(Chichester Harbour Area of Outstanding Natural Beauty (AONB))
CS15	(Flood and Coastal Erosion)
CS16	(High Quality Design)
CS17	(Concentration and Distribution of Development within the Urban Areas)
DM10	(Pollution)
DM8	(Conservation, Protection and Enhancement of Existing Natural Features)
DM9	(Development in the Coastal Zone)

Havant Borough Local Plan (Allocations) July 2014

AL1	(Presumption in Favour of Sustainable Development)
DM23	(Sites for Brent Geese and Waders)
AL2	(Urban Area Boundaries and Undeveloped Gaps between Settlements)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Countryside Access Team

Consultation response: **No objection subject to Conditions.**

Thank you for consulting Hampshire Countryside Service (the Service) as Highway Authority in respect of Public Rights of Way (PROW) and Commons Registration Authority. We also manage Country Parks and Countryside Sites throughout Hampshire. Please accept this as our response to the above application, taking into account the material considerations relating to Public Rights of Way, Commons and impacts to Hampshire County Council Country (HCC) Parks and Countryside Sites.

Site Context:

- Havant Footpath 103 (FP103) runs adjacent to the southern boundary to the proposed development.
- The proposed development lies within the Solent Maritime, Special Area of Conservation (SAC)
- Chichester and Langstone Harbours, a conservation area, a Special Protection Area (SPA) and a Sites of Special Scientific Interest (SSSI) all sit within the boundary of the proposed development.
- The site is not situated in a material proximity to any Hampshire County Council Countryside site.

Additional PROW are located in the local area. These are recorded on the Definitive Map of Rights of Way and Definitive Statement. A copy of the Definitive Map of Rights of Way and Definitive Statement and Countryside Sites can be found at <https://maps.hants.gov.uk/rightsofwaydefinitivemap/> and <https://www.hants.gov.uk/landplanningandenvironment/rightsofway/definitivemap> Policy

In the Applicant developing the proposal and in the Local Planning Authority reviewing that prior to determination, regard needs to be given to appropriate national and local planning policy. The National Planning Policy Framework (NPPF) December 2023 variously considers PROW and outdoor recreation, wellbeing, nonmotorised access, and more. The Service considers NPPF paras. 96, 97, 102, 104, 108, 110, and 116 to be particularly relevant to the PROW network and its users.

Commentary:

PROW is the generic term for Public Footpaths, Public Bridleways, Restricted Byways, and Byways Open to All Traffic. The value of the PROW network, also other public access routes and Trails open to the public, is in providing the means to realise many objectives of national and local plans - as examples, but by no means exhaustive, a good local access network can enhance community connectivity and cohesion; improve local environments by reducing local traffic congestion and improving air quality; support personal health and well-being of individuals and groups; and support local economies, whether in providing means of access to and from workplaces, offering passing trade such as with a cafe, or creating need for larger supply businesses as with cycle or equestrian users. Public access should, therefore, be given positive regard in this and all development plans and proposals; and for this reason all public access routes and Trails are a material consideration in determining any planning application - see DEFRA Circular 1/09, para.7.2.

Regrettably, the supplied plans do not identify FP103 that runs adjacent to the sites boundary, as required by national validation requirements. Where PROW are close to application sites or are used for access to the development site, applications must show these on the submitted plans and detail how they will be accommodated within the proposals. Government guidance requires that applications should not be validated by the Local Planning Authority (LPA) unless such a plan has been submitted. (Validation of Planning Applications - Statutory national information requirements paragraph 48 d).

The applicant has not provided clarity on how they intend to access the development site and whether they plan to use FP103 for vehicular access during both construction and occupation, specifically for future access to the slipway. The Service presumes that access to the site for, during both construction and occupation, will take place on the track on the southwest corner of the land within the applicants blue line boundary. Should this presumption be correct, there maybe

close interaction with the public using FP103 as part of this PROW runs across this entrance. (see definitive map link above).

In considering the impacts as a result of proposed development, the Service must be able to reasonably ensure the safe, convenient and priority access of PROW users at all times. The Service must request that suitable signage is installed during construction and occupation of development, that warns vehicles of the presence of PROW users. The Applicant is reminded that users on foot have priority over a FP103 for safe and convenient access.

During site construction, FP103 is to remain open and safely accessible at all times. Following the necessary assessments, if the developer believes it is impractical to keep the PROW open during construction, the applicant will need to demonstrate all possible mitigating measures. If a temporary closure is applied for, giving 8-weeks' notice to the service, and subsequently approved, the Service would ordinarily expect an applicant to provide a local alternative route at its liability for the duration of a temporary closure. Further information on how to apply for a Temporary Closure Notice can be found here: [Apply for a temporary closure | Hampshire County Council \(hants.gov.uk\)](#)

The King Charles III English Coast Path (KCIIECP), an emerging national trail, is proposed to run along/near FP103. Should this route be open at the time of development (subject to approval), we must advise that there will be a separate and additional process for a temporary closure/diversion of the KCIIECP that needs to be undertaken; should this be required. If a permanent closure is required, the Applicant will need to contact the service, specifically Alison Perry (the KCIIECP project Manager) to discuss the requirements.

The Service must further advise the applicant that there must be no surface alterations to the PROW network without the consent of Hampshire County Council as Highway Authority. Planning permission under the Town and Country Planning Act 1990 does not provide this and separate consent is required via a Section 278 agreement. To carry out any such works without this permission would constitute an offence under Section 131 of the Highways Act (1980).

Due to the nature of the surrounding habitat, the Applicant will likely, at the very least, be required to obtain SSSI Consent, undertake a HRA (Habitats Regulation Assessment) and FRAP (Flood Risk Activity Permit). As such, the service trusts the Applicant will consult and liaise with the relevant environmental colleagues during this planning application.

Based on the information presented in this application, we raise no objection subject to the following conditions:

1. No vehicles (including builder's and contractor's), machinery, equipment, materials, spoil, scaffolding, or anything else associated with the works, use, or occupation of the development, shall be left on or near to a Public Right of Way as to cause obstruction, hindrance, or a hazard to the legitimate users. The public retain the right to use the public right of way at all times.
Reason: To ensure the protection of public safety along the Public Right of Way network and no offence is committed under the Highways Act 1980

2. There must be no surface alterations to a Public Right of Way without the consent of Hampshire County Council as Highway Authority via a section 278

agreement. Planning permission under the Town and County Planning Act (1990) does not provide this and separate consent is required. To carry out any such works without this permission would constitute an offence under Section 131 of the Highways Act (1980).

Reason: To ensure no offence is committed under the Highways Act 1980.

3. All vehicles that would be legitimately accessing the site via a Public Right of Way should give way to public users at all times. In cases where legitimate vehicular access is required, a Construction Traffic Management Plan (CTMP) should be submitted to, and approved by, Hampshire Countryside Service as Highway Authority prior to any approval by the Planning Authority, and prior to commencement. This must include the locations and type of signage to be installed, and where construction vehicles/machinery are to be situated during construction.

Reason: To ensure the protection of public safety along the Public Right of Way network.

Officer Comment: *The agent has confirmed the PROW will not be used for vehicle parking or for the storage of materials prior to or during the construction period, and a Construction Traffic Management Plan has been submitted setting out how vehicle deliveries will be arranged. This will be secured via a condition on the decision notice should planning permission be granted.*

In other respects the PROW is adjacent the vehicular access to the Boatyard which is an existing active access used for the entering and exiting of the Marina. It is not considered the use of the existing access during the construction period would cause any further disruption to the users of the PROW than what is already existing from the use of the vehicular access by marina users.

Chichester Harbour Conservancy

Initial response

That Havant Borough Council, as local planning authority, be advised that Chichester Harbour Conservancy makes a holding objection to the proposed development, subject to clarification of the location of the swing moorings being surrendered and the basis on which the number of surrendered moorings has been calculated.

Once these matters have been clarified, The Conservancy is likely to be supportive, subject the mitigation set out in the preliminary ecological appraisal and a legal agreement to secure surrender of specified swing moorings within My Lord's Pond in Chichester Harbour and implementation with the specified building materials.

Interim response

RECOMMENDATION

That Havant Borough Council, as local planning authority, be advised that Chichester Harbour Conservancy, on the advice of its Ecologist, will remove its previous holding objection to the proposed development, if the applicant confirms, in writing, the mooring number codes in The Conservancy's records, to be surrendered, which with the element of pontoon removed, is now being suggested as mitigation within the Shadow Habitats Regulations assessment.

This being the case no objections are raised to the proposed pontoons subject to the specified mitigation set out on the CAD plan 19058-130 (dated 12/4/2024) and in the Lizard report (reference LLD3024-ECO-REP-002-00-sHRA), dated 16/02/24 being secured via a S.106 planning obligation, before the new pontoon areas are first brought into use, with no work being undertaken in the period 1 April to 30 September. Also that no obstruction of public footpath 103 is to take place during the construction works.

The Conservancy would also appreciate the Council attaching an informative reminding the applicant of the need to also apply for a Licence from the Marine Management Organisation and also a Works Licence from Chichester Harbour Conservancy.

Further comments

An existing pontoon is said to be 60.5m long.

Relevant planning history includes -

- 05/51187/005: Construction Erection of a Pontoon adjacent to and east of the existing slipway. Approved by the LPA on 2 August 2005. No details are available on the LPA public access webpage.
- APP/10/00953: Construction of Sea Defence Works. (Retrospective). There is no record of CHC commenting. Approved by the LPA on 7 March 2010.
- APP/20/00725 - Proposed extension to an existing pontoon. Conditionally approved by LPA on 26 January 2021.

The applicant proposes to construct a new pontoon 112m long and 2.43m wide, albeit the submitted drawing states 240m (although that is taken to include the five, 1.92m wide 'fingers' set at 90 degrees to the pontoon).

These shall be supported by 32no. concrete floats, with a total area of 91.04m². The new pontoon will improve the safety of boarding and alighting boat crews at peak times and improve the berthing times of arriving and departing boats, decreasing the time diesel powered boats are idling in the channel, improving the carbon footprint of boatyard operations.

4 piles are still indicated to anchor the pontoon, which would rise up and down with the tide and sit on 'float cages', with the shadow HRA concluding the permanent loss of 0.342m² of habitat within the SAC.

As such only the 'float cages' will rest on intertidal mud at low tide, not the whole pontoon. Each 'float' cage looks to be about 500-600mm deep/high and is said to be manufactured from preformed marine grade polyethylene.

Paragraph 6.1 of the agent's statement – "An existing single pontoon providing access to the swinging moorings will be removed". The agent says The Conservancy has been approached about these works. It has since been discovered that the applicant spoke with (then) The Harbour Master – Richard Craven - in 2019 about slightly different proposals. A Conservancy Works Licence would be required for the work and none has so far been applied for.

Whilst the applicant's agent initially made a reasoned case as to why they believe an EIA is not needed, it is for the Council to first be able to carry out an appropriate assessment of the environmental effects of the development, which The Conservancy considers to be significant. The Council should certainly not determine application APP/22/00822 until it has concluded that an EIA was not necessary.

There still appears to be some confusion over what is proposed and what is being offered in mitigation to ensure no 'significant effect' results to a Natura 2000 site under the Habitat Regulations 2017, once the Council as competent authority has made its appropriate assessment.

The originally submitted statement says 14 existing swing moorings and a length of existing pontoon are being surrendered to allow the new work to take place. The agent has confirmed they are outside the ownership of the applicant and that Notice has been served on the owner. The new pontoon is to be dedicated for the mooring of catamarans.

But the shadow HRA now talks of 16 moorings. Their locations are plotted in two ways.

Firstly as Appendix A to the shadow HRA and secondly as the CAD plan 19058-130 (dated 12/4/2024). Unfortunately those locations do not tally completely between the two documents. Also, having consulted the Harbour Patrol Team, the location of some do not appear in The Conservancy's records. No Conservancy code references are offered for each location. Furthermore The Conservancy thought the boatyard only had 10 such moorings, some of which are mud berths.

The discrepancy needs to be resolved by the applicant, such that all information which it is asking a decision to be lawfully taken on tallies. If this means the original statement is now superseded by an amended statement, then so be it.

Policy CS1/Strand 12 of the local plan says there shall be no net increase in moorings during the plan period. If the applicant is surrendering moorings that should not be there in the first place and are unlawful, then these should not be offered as mitigation.

The Conservancy's Planning Principle 11 states the following about new/extended intertidal structures –

“PP11: Intertidal Structures Planning applications for intertidal structures will be assessed for their impact on the visual land/seascape, nature conservation and navigational safety.

The Conservancy will only support new intertidal structures where:

- It is demonstrated they are for essential public use or it is demonstrated the development is necessary to ensure the continued viability of a marine related enterprise; and
- Any nature conservation impact can be mitigated; and
- There is no adverse land/seascape or visual amenity impact; and
- The safety of navigation on the water is maintained.”

No overall increased visual impact per se would occur at the shoreline, owing to the existing character of the boatyard shore line.

A legal agreement should be in place to secure the surrendering of any existing swing moorings and redundant length of pontoon, before the new elements of pontoon are first brought into use. It is of the utmost importance that the international ecological designations of Chichester Harbour must first be safeguarded, with no net loss to habitat for The Conservancy to support this marine enterprise.

Final response

Thank you for the agent's recent information regarding the code numbers of the

moorings being surrendered. These all check out with CHC Harbour Patrol records. Therefore, I am able to confirm Conservancy Officers are withdrawing the previous holding objection to APP/22/00822.

Subject to the mitigation - which I assume will be secured by a planning obligation - with no first use of the new pontoon elements until the mitigation has been actioned, Conservancy Officers raise no objections to the proposals, subject to implementation with the specified construction materials and executing the works in strict accordance with Section 5 of the Shadow Appropriate assessment prepared by Lizard, especially paragraph 5.12.

As you observed, I had a typo in my previous recommendation, whereby such works should only be carried out between April – October inclusive, whereas I had wrongly stated it the other way around.

Officer Comment: *The Local Planning Authority have considered the suggestion for a Legal agreement from Chichester Harbour Conservancy. The Local Planning Authority are of the opinion that a Legal Agreement would be disproportionate as the proposal could be managed with the same results through conditions attached to the decision notice.*

These conditions were sent to Chichester Harbour Conservancy for comment. No further comments were received and therefore the conditions are considered satisfactory.

In regard to the details of the proposed development and the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, the Local Planning Authority hereby adopted an opinion to the effect that the characteristics of the development, its location and potential impacts would not lead to likely significant environmental effects that could not be otherwise considered during the course of this application. Accordingly, the proposed development was not considered to constitute an EIA development, and an Environmental Statement was not required.

Marine Management Organisation

Please be aware that any works within the Marine area require a licence from the Marine Management Organisation. It is down to the applicant themselves to take the necessary steps to ascertain whether their works will fall below the Mean High Water Springs mark.

Response to your consultation

The Marine Management Organisation (MMO) is a non-departmental public body responsible for the management of England's marine area on behalf of the UK government. The MMO's delivery functions are; marine planning, marine licensing, wildlife licensing and enforcement, marine protected area management, marine emergencies, fisheries management and issuing European grants.

Full response viewable online.

Officer Comment: *If permission is granted the response to the consultation would be an informative on the decision notice.*

Ecologist

Initial response

The application is accompanied by an Extended Phase 1 Ecological Assessment (Phillips Ecology, August 2022).

The application site is located within the Solent Maritime Special Area of Conservation (SAC), Chichester & Langstone Harbours Special Protection Area (SPA) and Ramsar site and is adjacent to Chichester Harbour Site of Special Scientific Interest (SSSI). The footprint of the works is within an area of the Priority Habitat 'Intertidal Mudflats' and contains the SAC qualifying habitats 'Intertidal Mud' and 'Intertidal Mixed Sediments'.

The proposal is to replace the existing swing moorings with a fixed mooring platform. The footprint of the new pontoon is c.280m² with permanent direct impacts to the intertidal habitats occurring through the installation of four aluminium piles. The pontoon will rise and fall with the tide using floats, each of which is c.3.24m² in area. It is unclear how many of these floats are to be installed. The pontoon deck will rest on the floats at low tide, being c.660mm above ground level.

Whilst the removal of swing moorings is welcome (these are damaging to the intertidal habitats), in order to adequately assess the potential impacts to the various designated sites it is necessary to quantify the extent of intertidal habitat to be affected, both permanently and temporarily. Permanent impacts will arise through the installation of piles and temporary impacts will occur through the contact between the floats and the intertidal habitat as well as the potential effects of the resting pontoon at low tide periods. Together, these factors would lead to an area of habitat being unavailable at lower tidal periods as well as a permanent loss at all periods.

The application should include sufficient detail to enable the Local Planning Authority to undertake a Habitats Regulations Assessment (HRA). This should comprise an assessment of the potential effects on individual qualifying features (habitats and species) of each of the European designated sites within the application site. Whilst overall the predicted impacts may be relatively limited in the context of the wider European sites, the process of HRA must be followed in order for the LPA to effectively discharge its obligations under the Habitats Regulations. HRA is not able to take into account any mitigating measures when screening potential impacts. In this case, as there will be permanent and temporary impacts potentially arising from the proposal (habitat loss, visual disturbance, noise, pollution) it would be necessary to conclude that a Likely Significant Effect on the European sites could occur. It follows that further assessment would be required (often called the 'appropriate assessment and integrity test'), during which any mitigating measures can be discussed.

In summary, the site is within European designated sites and there is potential for impacts to the qualifying features of those sites. This necessitates that HRA is required. It is for the applicant to provide sufficient information to allow the LPA to complete its own HRA. HRA should consider the potential impacts on individual qualifying features of each of the European designated sites, and should be informed by the published High Level Conservation Objectives (HLCO), Supplementary Advice on Conservation Objectives (SACO) and Advice on Operations (AoO). Impacts should be qualified and qualified.

NPPF, Circular 06/2005 and Natural England Standing Advice on Protected Species, require that planning decisions are based on full, up-to-date ecological information and it is essential that all necessary survey, assessment and mitigation information is

available to the LPA prior to determination, particularly in the case of protected habitats and species, which are a material planning consideration. This will enable the LPA to determine the application on the basis of full knowledge about the ecological impacts of the proposal and to ensure that any impacts can and will be mitigated and are acceptable.

Officer comment: *Following the response from the Council's Ecologist the applicant's agent provided an Ecology Shadow Habitats Regulations Assessment.*

Interim response

The application is accompanied by a Shadow Habitats Regulations Assessment (Lizard, February 2024). The HRA includes details of potential impact pathways affecting the Solent Maritime SAC and Chichester & Langstone Harbours SPA and Ramsar and concludes that it is reasonable to assume a Likely Significant Effect on all three sites as a result of: physical loss of habitat (permanent and temporary), noise disturbance, visual disturbance, litter, and waterborne pollution. Each of these impact pathways is described and I concur with the outcome of the HRA screening and assessment of impact.

In respect to the identified habitat losses (permanent and temporary), it is proposed that the removal of a series of existing concrete blocks from the intertidal plus the removal of the two existing pontoon sections will provide a small net gain in intertidal habitat. In addition, the change from the current swing moorings to a pontoon mooring system will remove the scouring effects of the current mooring layout.

In terms of the potential effects of noise and visual disturbance, it is proposed to undertake works only in the period 1 April to 30 September, thereby avoiding the overwintering bird season.

The potential effects of litter and waterborne pollution will be controlled via construction phase prevention measures, and will be detailed in full within a Construction Environment Management Plan (CEMP).

Havant Borough Council, as the competent authority under the Habitats Regulations, will need to undertake its own HRA. Based on the submitted Shadow Habitats Regulations Assessment I am content that the HRA is able to conclude that there would not be impacts affecting the integrity of the identified designated sites. If you are minded to grant permission, can I suggest that all ecological avoidance and mitigation measures are included within a single, comprehensive Construction Environment Management Plan (CEMP).

Prior to the commencement of any development activities, a Construction Environment Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall be in accordance with the outline avoidance and mitigation measures within the Shadow Habitats Regulations Assessment (Lizard, February 2024) and shall include (but not necessarily be restricted to): full details of noise and visual disturbance and waterborne and airborne pollution control measures, with roles, responsibilities and monitoring measures clearly detailed. Reason: to protect biodiversity in accordance with the Environment Act 2021, Conservation Regulations 2017, Wildlife & Countryside Act 1981, NPPF, NERC Act 2006 and Policy CS 11 of the Havant Borough Core Strategy March 2011.

Officer comment: *Following the response from the Council's Ecologist the applicant's*

agent provided an Construction Environmental Management Plan.

Final response

The application is now accompanied by a Construction Environment Management Plan (CEMP) (CAD, March 2024). The CEMP includes details of pollution control measures including the storage of chemicals and spillage protocols. A protocol for piling is provided, detailing that no piling works will occur between 1st April and 30th September (thus avoiding the wintering bird period, and negating issues relating to noise and visual disturbance). The process for removing the existing swing mooring blocks is detailed.

If you are minded to grant permission, can I suggest that all ecological avoidance and mitigation measures within the Construction Environment Management Plan (CEMP) are secured.

Development shall proceed in strict accordance with the ecological avoidance and mitigation measures detailed within the Construction Environment Management Plan (CEMP) (CAD, March 2024) and Shadow Habitats Regulations Assessment (Lizard, February 2024).

Reason: to protect biodiversity in accordance with the Environment Act 2021, Conservation Regulations 2017, Wildlife & Countryside Act 1981, NPPF, NERC Act 2006 and Policy CS 11 of the Havant Borough Core Strategy March 2011.

Environment Agency

Initial response

In the absence of any information to demonstrate that the proposals are compliant with the Water Framework Directive (WFD), we are unable to provide comments on the proposals and object to the proposal.

Final response

We have reviewed the information as submitted and set out our position below.

Environment Agency Position

We have **no objection** to the proposal as submitted

Advice to Applicant

Environmental Permit

on or within 8 metres of a main river (16 metres if tidal)

on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)

on or within 16 metres of a sea defence

involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert

in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission

For further guidance please visit

<https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday, 8am to 6pm) or by emailing enquiries@environment-agency.gov.uk

The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

Officer Comment: *If permission is granted the EA's advice would be an informative on the decision notice.*

Hampshire Wildlife Trust, Beechcroft House

No Comment.

Natural England Government Team

Initial response

We can confirm that the proposed works are located within Chichester and Langstone Harbours SPA and Solent Maritime SAC.

Likely significant effect, appropriate assessment required

Natural England's advice is that this proposed development may contain (or require) measures intended to avoid or reduce the likely harmful effects on a European Site, which cannot be taken into account when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment (noting the recent People Over Wind Ruling by the Court of Justice of the European Union).

For this reason, we advise that on the basis of the information supplied that the application may have a likely significant effect on these sites. These measures therefore need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment, in accordance with the Conservation of Habitats & Species Regulations 2017.

These measures and any further mitigation measures can be considered during an appropriate assessment, to determine whether a plan or project will have an adverse effect on the integrity of the European site.

Natural England advises that it is a matter for your Authority to decide whether an appropriate assessment of this proposal is necessary in light of the People Over Wind ruling. In accordance with the Conservation of Habitats & Species Regulations 2017, Natural England must be consulted on any appropriate assessment your Authority may decide to make.

Marine and Coastal Access Act 2009

The works, as set out in the information supplied by the applicant, are not sited within or near to a Marine Conservation Zone. Natural England have not identified a pathway by which impacts from the development would affect the interest features of the site(s). We are therefore confident that the works will not hinder the conservation objectives of such a site.

Wildlife and Countryside Act 1981 (as amended)

We can confirm that the proposed works are located within Chichester Harbour SSSI. Natural England recommends that that your authority does not provide permission for this activity until the bird interests for this site have been appropriately assessed.

Biodiversity enhancements

This application may provide opportunities to incorporate features into the design which are beneficial to wildlife. The authority should consider securing measures to enhance the biodiversity of the site from the Applicant, if it is minded to grant permission for this application. This is in accordance with Section 40 of the Natural Environment and Rural Communities Act (2006) which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) of the same Act also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.

Protected Species

Natural England has produced standing advice to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Invasive Non-Native Species (INNS)

The Applicant should ensure that all necessary biosecurity measures are taken to avoid the introduction and / or spread of INNS.

Final response

The Conservation of Habitats and Species Regulations 2017 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended)

We can confirm that the proposed works are located within Chichester and Langstone Harbours Special Protection Area (SPA), Chichester and Langstone Harbours Ramsar, and Solent Maritime Special Area of Conservation (SAC).

Assessment of likely significant effect

Natural England's advice is that this proposed development may contain (or require) measures intended to avoid or reduce the likely harmful effects on a European Site, which cannot be taken into account when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment (noting the recent People Over Wind Ruling by the Court of Justice of the European

Union).

For this reason, we advise that on the basis of the information supplied that the application may have a likely significant effect on these sites. The application requires an appropriate assessment in accordance with the Conservation of Habitats & Species Regulations 2017 (as amended).

Appropriate assessment

We note that your authority, as competent authority under the provisions of the Habitats Regulations, has adopted an Appropriate Assessment of the proposal in accordance with Regulation 63 of the Regulations.

Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process.

Your adopted appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions. This conclusion is based on the evidence provided within the updated HRA demonstrating the negligible use of the substrate to be lost by SPA bird species as demonstrated through bird surveys and providing that all mitigation measures are appropriately secured in any permission given. This mitigation includes piling to take place outside of the overwintering period, the use of vibro piling and soft-start procedures, and the production of a CEMP.

Marine and Coastal Access Act 2009

The works, as set out in the information supplied by the applicant, are not sited within or near to a Marine Conservation Zone. Natural England have not identified a pathway by which impacts from the development would affect the interest features of the site(s). We are therefore confident that the works will not hinder the conservation objectives of such a site.

Wildlife and Countryside Act 1981 (as amended)

We can confirm that the proposed works are located within Chichester Harbour Special Site of Scientific Interest (SSSI). Natural England advises that the proposal, if undertaken in strict accordance with the details submitted, is not likely to damage the interest features for which the site has been notified. As the features of the SSSI overlap with those of the SAC and SPA, please see the Other Relevant Matters Section and the The Conservation of Habitats and Species Regulations 2017 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) section for our advice and relevant conditions.

Other Relevant Matters

Removal of Legacy Structures, Swing Moorings and Anchorage

To reiterate Natural England's previous advice on this case (Our Reference: 471556) the updated adopted HRA mentions compensation with regard to the removal of legacy structures, moorings, and anchorages to reinstate roughly 27m² of intertidal habitat.

However as per the Hilde Orleans and Others v Vlaams Gewest (joined cases C-387/15 and C-388/15) caselaw judgements, compensation in the form of habitat creation to offset losses cannot be considered within the Appropriate Assessment stage of the HRA process.

Whilst Natural England do not consider the removal of legacy structures, moorings, and anchorages to be mitigation for the installation of the pontoon extension, they do achieve 'net gain' for this project. The 'environmental net gain' principle is one of the key actions noted in Defra's 25 Year Environment Plan. Additionally, Section 40 (1,3) of the Natural Environment and Rural Communities (NERC) Act, sets out that "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity". As such, Natural England welcomes the commitment to these removals and recommends this 'give back' and habitat creation to be conditioned within the license for this project.

Best Practice Measures

In order to further reduce environmental pressures, we recommend that the following best practice measures should be adhered to and secured in the marine licence:

- The applicant should ensure that only coatings and treatments that are suitable for use in the marine environment are used in accordance with best environmental practice.
- All reasonable precautions should be undertaken to ensure no pollutants enter the waterbody.
- The applicant should ensure that all equipment, temporary structures, waste and/or debris associated with the application is removed upon completion of the works.
- The applicant should ensure that all material is disposed of at an approved waste site.

Invasive Non-Native Species (INNS)

You should ensure that all necessary biosecurity measures are taken to avoid the introduction and or spread of INNS

Migratory Fish

The proposed dredging works have the potential to affect migratory fish communities which may be present within the harbour. Natural England recommends that you consult the Environment Agency for further information about the requirement for possible timing restrictions.

Protected species

We have not assessed this application and associated documents for impacts on marine protected species as listed on Schedule 5 of the Wildlife and Countryside Act (1981 as amended). The onus is on the Applicant and the LPA to ensure that they are legally compliant with the legislation throughout the duration of the licence. Further details of the species protected through this legislation can be found here: <https://www.gov.uk/government/publications/protected-marine-species>.

Open Space Society

No Comment.

Royal Society for the Protection of Birds

No Comment.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 4

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 0

7 Planning Considerations

Habitat Regulations & Appropriate Assessment:

- 7.1 The Council has conducted a Habitats Regulations Assessment (HRA), including Appropriate Assessment (AA), of the proposed development under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended). The Council's assessment as competent Authority under those regulations is included in the case file. The screening under Regulation 63(1)(a) found that the proposed works have potential to result in impacts to the Solent European Sites and the species they support via noise and visual disturbance, and airborne and waterborne pollution, on the basis of the following:

Recreational Pressure

The proposed development is within 5.6km of Chichester & Langstone Harbours SPA/Ramsar. However, the application in question does not represent a net increase in population as the development consists of extending the existing pontoons and the installation of the pontoon decks, and the removal of the existing swinging mud moorings, which is neither connected to nor necessary to the management of any European site. As a result, there would be no likely significant effect to the Chichester & Langstone Harbours SPA due to recreation.

Water Quality

The proposed development is within the catchment of a wastewater treatment works that would drain into the Chichester and Langstone Harbours SPA/Ramsar and Solent Maritime SAC. However, as the proposal would not result in an increase in residential housing or overnight accommodation there will be no likely significant effect as a result of an increase in nutrients entering the Solent's European sites.

Construction Impact

The proposed works have potential to result in construction phase impacts to the interest features of Chichester & Langstone Harbours Special Protection Area (SPA) and Ramsar. The potential impact pathways are: noise and visual disturbance, and airborne and waterborne pollution.

- 7.2 The planning application was then subject to Appropriate Assessment under Regulation 63. This included consideration of a Construction Environmental

Management Plan (CEMP) submitted in respect of the proposals, and setting out a range of measure to avoid and mitigate environmental impacts.

- 7.3 The Council's Ecologist has confirmed that the CEMP is acceptable, and the Appropriate Assessment therefore concluded that this avoidance and mitigation package is sufficient to remove the significant effects on European Sites which would otherwise have been likely to occur. The HRA was subject to consultation with Natural England as the appropriate nature conservation body under Regulation 63(3) who have confirmed that they agree with the findings of the assessment providing that all mitigation measures are appropriately secured in any permission given.

- 7.4 In other respects, having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact upon the character and appearance of the area
- (iii) Impact upon residential amenity
- (iv) Ecology Matters
- (v) Flood risk

- (i) Principle of development

- 7.5 The application site is located outside of the defined urban area and within a non-urban area. However, the site is located within an existing Boatyard and is concerned with an extension to an existing pontoon, for use in connection with the lawful use of the land. Policies AL1 and AL2 in the Havant Borough Council Local Plan (Allocations) July 2014 are relevant and Policy AL2 states that planning permission will be granted for developments within undeveloped gaps or non-urban areas that help to define the separate identity of settlements and prevent their coalescence where development relates to small scale householder development. Whilst the application is not a householder development, it seeks permission for an extension to an existing pontoon, which would facilitate the lawful use of the site as a Boatyard. This small scale development would not undermine the separate identities of settlements or result in their coalescence. As such, there is no objection in principle to the proposal, subject to compliance with other Development Plan Policies.

- (ii) Impact upon the character and appearance of the area

- 7.6 The application site is located within Chichester and Langstone Harbours Special Protection Area (SPA), the Chichester and Langstone Harbours Wetland of International Importance under the Ramsar Convention (Ramsar site), the Solent Maritime Special Area of Conservation (SAC), Chichester Harbour Site of Special Scientific Interest (SSSI) and the Chichester Harbour National Landscape.

- 7.7 The proposal would not be visible from the public footpath to the north east and would be seen in the wider area as an extension to an existing feature, with the backdrop of the Boatyard. Subject to the mitigation being secured as set out in the Shadow Habitats Regulations Assessment (Lizard, July 2024) - see Paragraph 7.9 below - it is considered that the development would accord with the objectives of Policy CS15 of the HBLPCS, and the Chichester Harbour AONB SPD, and it is noted that Chichester Harbour Conservancy have not objected to the application on landscape grounds.

- (iii) Impact upon residential amenity

- 7.8 There is a residential development to the southwest of the proposal. Due to the separation distance of the proposal to existing residential development, it would have no material impact on the amenity of occupiers of these properties. The proposal would therefore accord with Policies CS16 and DM10 of the HBLPCS. It is noted that no letters of objection have been received in respect of the proposal.

(iv) Ecology matters

- 7.9 The Council's Ecologist has been consulted throughout the process of the application. The key ecological implications of the development are set out under the *Habitat Regulations & Appropriate Assessment* section of this report at Paragraphs 7.1 - 7.3. From their latest response they raise no objection subject to compliance with the Construction Environment Management Plan (CEMP) (CAD, March 2024) and Shadow Habitats Regulations Assessment (Lizard, July 2024). The latter sets out the following mitigation for the works proposed:

Compensation for the permanent loss of habitat as a result of piling works, and the temporary habitat loss at low tide, shall be provided through the removal of 16no. concrete anchor blocks and associated buoys and chains, each covering an area of c. 0.636m². Furthermore, the 2no. existing pontoon sections located to the south-east of the proposed development site shall be removed. The removal of these features shall result in the restoration of approximately 26.37m² of intertidal habitat.

Further compensation shall be provided through the relocation of 10no. existing swinging moorings onto the new pontoon. The relocation of these moorings shall remove negative impacts currently arising from scour/abrasion during operational activity as there will be no uncontrolled swing of vessels and no mooring chains or anchoring activity to impact the substrate. Recent research by the University of Swansea found that each swinging mooring damaged an area of 122m² of seabed habitat. The relocation of these moorings to fixed points along the pontoon shall therefore represent an overall benefit to habitats within the SAC / SPA.

- 7.10 A condition pertaining to compliance with the CEMP has been recommended to the decision.

(v) Flood Risk

- 7.11 The site falls within Flood Zones 2 and 3 and future flood zones. The amount of new non-residential floorspace is minor, at 240sqm, and thus falls below the threshold for a Sequential Test as set out in the NPPF. In addition it is noted that "*Docks, marinas and wharves*" are defined as "*Water Compatible Development*" in the NPPF.
- 7.12 The Environment Agency (EA) has been consulted over the proposal, and have raised no objection to the proposals as submitted. The Environment Agency has provided advice for the applicant which has been included as an informative on the decision notice.

8 Conclusion

- 8.1 The proposal would not adversely impact on the character and appearance of the area or residential amenity and is acceptable in ecology and flood risk terms, subject to conditional planning permission.
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9 RECOMMENDATION:

That the Development Manager be authorised to **GRANT PERMISSION** for application APP/22/00822 subject to the following conditions:

- 1 The development must be begun not later than three years beginning with the date of this permission.
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan - 19058120 B - Received 23 August 2022

Existing Moorings Plan - Drawing No.19058_130A - Received 18 September 2024

Proposed Site Plan - 19058121 B - Received 23 August 2022

Solent Marine Block Plan - Received 22 August 2022

Construction Environmental Management Plan - Wilsons Boatyard Ltd. - Received 26 March 2024

Design and Access Statement - Received 23 August 2022

Pontoon Simbro Details - Received 23 August 2022

Ecology Shadow Habitats Regulations Assessment rev 01 - Received 08 July 2024

Extended Phase 1 Ecological Assessment - Received 23 August 2022

Construction Traffic Management Plan - Received 07 April 2025

Reason: - To ensure provision of a satisfactory development.

- 3 Development shall proceed in strict accordance with the ecological avoidance and mitigation measures detailed within the Construction Environment Management Plan (CEMP) (CAD, March 2024) and Shadow Habitats Regulations Assessment (Lizard, July 2024).
Reason: To protect biodiversity in accordance with the Environment Act 2021, Conservation Regulations 2017, Wildlife & Countryside Act 1981, National Planning Policy Framework, Natural Environment and Rural Communities Act 2006 Environment Act 2021, Conservation Regulations 2017, Wildlife & Countryside Act 1981, and Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.
- 4 No development including percussive piling or works with heavy machinery (i.e. plant resulting in a noise level in excess of 69dbAmax – measured at the sensitive receptor) shall be carried out during the bird overwintering period (i.e. October to April inclusive). The sensitive receptor is the nearest point of the Special Protection Area or any Special Protection Area supporting habitat (e.g. high tide roosting site).
Reason: In the interests of the environmental and ecological importance of the site and its surroundings and accordance with the Environment Act 2021, Conservation Regulations 2017, Wildlife & Countryside Act 1981, National Planning Policy Framework, Natural Environment and Rural Communities Act 2006 and Policies CS11, CS12, DM8, DM9 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011.

- 5 The external materials used shall be as indicated on the submitted forms and hereby approved plans.

Reason: In the interests of the amenities of the area and having due regard to Policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 6 The development shall be carried out strictly in accordance with the Construction Traffic Management Plan hereby approved. No vehicles (including builder's and contractor's), machinery, equipment, materials, spoil, scaffolding, or anything else associated with the hereby approved works, use, or occupation of the development, shall be left on or near to the Public Right of Way footpath FP103 so as to cause obstruction, hindrance, or a hazard to the legitimate users.

NB The public retain the right to use the public right of way at all times.

Reason: To ensure the protection of public safety along the Public Right of Way network and ensure no offence is committed under the Highways Act 1980 and having regard to Policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.