

HAVANT BOROUGH COUNCIL

Town & Country Planning Act 1990

Consultation on Planning Application

MEMORANDUM

From:	Environmental Health	To:	Development Control
Our Ref:	CONS/18/02045	Your Ref:	APP/13/00317
EH Case Officer Extn:	44 6677	Date:	19 October 2018
DC Case Officer:	Rachel Ballam		
DC Case Officer Extn:	6143		
Application Number:	APP/13/00317		
Site Address:	Yacht Haven Development Site, Copse Lane, Hayling Island		
Proposed Development:	Construction of 6No. 5 bed detached houses, 1No. detached boat store and ancillary office building , 1No. detached boat store for sailing charity use with hardstanding, pontoon restricted to 12 berths (6 for house residents and 6 for non residents), improvements to slipway, beach, reposition concrete sea defence to side of slipway, coastal footpath and the creation of one area of coastal meadow and one area of conservation grassland. (Revised application.) (Approved 24.11.15).		

A request has been made to discharge the following condition(s) on the above application:

Condition 18: No infiltration of surface water drainage into the ground (Reason: Contamination)

Condition 24: Working method statement to cover all construction works (Reason: To minimise impacts on the intertidal habitat)

Observations / Comments:

I have reviewed the supporting information to this application, and would like to make comments as below:

Condition 18

The SUDS Maintenance Manual is notably poorly drafted; extremely generic in nature, and inconsistent with c.18, and apparently the drainage general layout and external works drawings. It is not clear that features referred to in the plan are actually proposed, and the plan refers to infiltration (soakaway) drainage more or less throughout.

I also note that the SUDS tool (rooves) is predicated on an infiltration solution - where pollution indices selected for the (essentially proprietary) 'Attenuation tanking and inspection chamber sumps' are selected to explicitly match that achieved by 300mm organic rich aerobic soils (with good pollutant attenuation properties). The soils are irrelevant to a system which comprises "direct communication to silt trap / sump, flow attenuation within holding tank, and rate-controlled discharge to controlled water".

The pollution performance of the proposed system (apparently proposed, notwithstanding indications to the contrary in the maintenance manual) is entirely dependent upon the orientation

/ configuration of sump chambers. In order to achieve the hydrocarbon performance, the chambers will need to be constructed as a simple oil interceptor chamber. No construction detail is provided to indicate that this is proposed.

I am mindful that the LLFA is apparently satisfied with the proposals, and also of that the wording of c.18 does not necessarily- (at least directly-) concern the matters described above.

Condition 18 stipulates *"No infiltration of surface water drainage into the ground within the application site is permitted unless the prior written approval of the Local Planning Authority is first obtained following the submission of details, (which approval may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters).*

Key wording is considered to be the phrase *"Surface Water Drainage"* (as distinct from merely *"Surface Water"*), *"unless...approval is obtained"*, and *"...where it has been demonstrated that there is no resultant unacceptable risk to controlled waters"*

Considering this my interpretation of the current application is that applicant as seeking approval for a permeable driveway solution for the infiltration of surface water; and that infiltration drainage is not proposed for any other purpose.

I believe that it would be erroneous to interpret the permeable driveway solution proposed as "surface water drainage", as this construction does not represent a collection > conveyance > concentration/storage > point discharge system. Rather, permeable construction is intended to be a 'transparent' hard surfacing, allowing infiltration of "surface water", as distinct from "surface water drainage", in the same way that the soft landscaped areas do. The limited permeability of the driveway surface will serve to retain pollutants within an aerobic zone where degradation can occur.

If we were to interpret c.18 in the stricter sense, for the purposes of preventing contaminant mobility (where contaminants are known to be moving in leachate), we would by extension require that soft landscapes & private gardens be constructed in such a way as to prevent infiltration to any existing (made-/natural-) soils not removed during construction. This is not considered to be a reasonable requirement given the risks. On this basis, the principle of permeable driveways is accepted.

On the basis of the external works construction details, and the general drainage layout, no other infiltration drainage is proposed. Strictly on this basis, the applicant has demonstrated that the principle requirement of c.18 has been met (no infiltration drainage).

It has not yet been established that surface water infiltration does not pose a risk to the harbour - indeed site investigation information suggests that it probably does. This would include infiltration in garden areas, and a mitigation solution may yet be required in order to manage the *mobilised* contamination, as a more practical solution to attempting to prevent the *mobilisation* of contaminants (assuming a risk assessment does not deem the leach rate to be acceptable). In any event, limiting infiltration would reduce leach rates, so an infiltration drainage solution is indeed undesirable - but it is recognised that it is impractical to attempt control the infiltration of surface water across a site of this scale.

I would however recommend that either i) the SUDS maintenance manual is extensively revised before being approved, or ii) that the SUDS maintenance manual is explicitly excluded from the list of approved documents, for the avoidance of doubt.

Condition 24

The applicant does not appear to have sought to directly address all of the comments from Environmental Health in the revisions to the CMS..

The version notes on page 2 appear to be in error, in that v1.1 is listed as having an amended 'Waste' section, whereas this appears to be unchanged from v1.0; and an unlisted amendment has been made to the materials delivery & storage section. It is not entirely clear (therefore) whether the version submitted is the latest version intended, you may wish to confirm with the applicant.

At the original consultation, Environmental Health recommended material amendments to 'control of mud', and 'materials delivery & storage' in order to address the reasons given for imposition of c.24; amendment of permitted Saturday working hours, and the inclusion of provisions relating to damping of haul routes and presence of a mains water supply in order to mitigate the risk of nuisance (comments from Mark Moss). 'Saturday working hours', 'waste', and 'control of mud' provisions have not been amended. 'Control of Dust & Dirt' contains a direct copy & paste of wording suggested by Mark.

Changes to the materials delivery/storage provisions reflect the recommendations of Environmental Health, though the revised text is not as robust as anticipated. That materials stored at the site will be "assessed" for its pollution potential implies that steps will be taken where a pollution potential exists - but this is not stated explicitly. I am satisfied however that inclusion of reference in this section to Chichester Harbour does serve to put a 'stake in the ground' which will strengthen the enforcement position of the appropriate regulator where pollution problems arise.

I made comments in my previous response to make clear how the text of the 'waste' section would be interpreted, and the same might be helpful in respect of the 'materials delivery / storage' section to the effect that "regulators will interpret this section as if the implied actions were stated explicitly".

The reason for the requirement to have an approved CMS is to mitigate any adverse impact to the harbour. Comments made previously with respect to mud & materials were in order to address the risk of runoff from the site of sediment and pollutants. The impact to the Harbour impact is essentially an impact to Ecological. Irrespective of the specifics of provisions, having a named ecological clerk of works (and a programme of periodic proactive inspection) does lend substantial confidence that there is both an awareness of this issue, and a mechanism for the developer to access expert advice (upon becoming aware of a pollution issues) on mitigation of the immediate impact and actions that should be taken to prevent recurrence. I would expect the proactive inspection to highlight any risks to the harbour ecology before they occur, and for mitigation steps to be recommended to prevent pollution occurring.

Relying upon this provision, I would conclude that there is no need to insist upon further amendments to the text to make clearer the importance of managing works for the prevention of ecological harm. This is expedient, given the time impetus on commencement for the base consent, which I understand expires in November.

For clarity however, if it is possible on a discharge of conditions application, I would recommend that the following informative be appended to any positive determination in respect of c.24.;

"The acceptance of the HCS Safety Construction Method Statement (CMS) for Alpine Homes (Yacht Haven Development Site) within this determination by the Local Planning Authority, and the undertaking of works in compliance with its provisions, does not amount a defense against

s80 or s82 nuisance proceedings. For the avoidance of doubt, for the purposes of the legal test for nuisance, Environmental Health currently regard 'reasonable' Saturday working hours in relation to noisy tasks on a commercial construction site, to be from 08:00am to 13:00pm. By extension, such tasks undertaken outside these hours may be determined to be 'unreasonable', irrespective of the provisions of the CMS.

Where the CMS refers to assessment of risk or impacts, and implies appropriate actions will be taken in response to those assessments, for enforcement purposes the appropriate regulator will interpret the text as if the implied actions were stated explicitly"

Inclusion of the informative should avoid the need to insist that wording contained within the CMS be further amended, and so avoids the need to either recommend refusal of this application or a scramble to get a suitably revised version submitted within the life of this application.

On this basis, this service can support the discharge of c.24.

Mr. Jonathan Driver
Environmental Control Officer