



nature's voice

Mrs Rachael Hebden
Havant Borough Council

By Email only: planning.development@havant.gov.uk

3 February 2012

Dear Mrs Hebden

Application ref: APP/11/00955

Location: YACHTHAVEN, COPSE LANE, HAYLING ISLAND, PO11 0RH

Proposal: Construction of 6 no. detached houses, detached marine office, detached building comprising 6 no. boatsheds, small boatyard, pontoon for 19 berths, reinstatement of slipway, improvements to sea defences, coastal footpath, restoration of sluice pond and creation of a nature reserve

**Chichester and Langstone Harbours Special Protection Area/Ramsar site
Chichester Harbour Site of Special Scientific Interest ('SSSI')**

Many thanks for consulting the RSPB on the above application. The RSPB **OBJECTS** to the proposals as set out within the application.

The development site is located in a highly sensitive area, positioned adjacent to and (in part) within sites of international, national and local importance to wildlife. Of particular concern to the RSPB is the Chichester and Langstone Harbours Special Protection Area ('the SPA') and Ramsar site, which supports internationally important populations of wintering and passage waterbirds, including ducks, geese and wading birds. Populations of these birds are particularly susceptible to disturbance, and therefore any loss, damage or disturbance to the areas supporting these birds is a cause for considerable concern.

For the reasons set out below, we do not consider that the application and its supporting documents have demonstrated beyond reasonable scientific doubt that significant impacts will not occur on the designated nature conservation sites. Without an adequate mitigation strategy for the proposed development, we do not consider that the application passes the stringent tests of the Habitats Regulations.

We draw your attention to the relevant legal tests set out under the Habitats Regulations that must be fulfilled before an application such as this can be granted:

1. Regulation 61(1) requires that where a project has a likely significant effect on a European site (alone or in combination), the competent authority (in this case the Council) must make an *appropriate assessment* of the implications for that site in view of that site's conservation objectives.
2. Regulation 61(5) requires that the competent authority may only agree to a project after having ascertained that it will not adversely affect the integrity of the European site.

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We have set out our key concerns regarding this proposal below. However, in summary our key concerns relate to the potential impacts resulting from the following:

- Loss of intertidal mudflats from within the SPA/Ramsar/SSSI as a result of the pontoon and coastal defence works.
- Damage to intertidal habitat, including *Zostera* (eelgrass) beds, from boat movements and potential access proposals.
- Disturbance to roost sites at Gutner and Verner due principally to boat disturbance.

Loss of intertidal habitat

It is predicted that the proposals will result in the net loss of up to 1,500m² (250-300m² loss as a result of the proposed pontoon and the new retaining wall; 1,300m² loss as a result of the moored boats; and 100m² gain from the removal of the existing sea defences) of intertidal habitat from within the SPA/Ramsar/SSSI. The applicant suggests that this loss of designated habitat would not have a significant impact on the wintering bird populations within the Harbour, as this part of the Harbour is assessed by the applicant as being of low value to feeding birds. The RSPB disagrees with this assessment.

While the data presented suggests that the majority of birds feed in the outer part of the creek, the November 2011 Ecological Assessment (Appendix 3.2 of the Environmental Statement ('the ES'), herein referred to as '**the Ecological Assessment**') (section 3.6.5) acknowledges that the supplementary bird surveys carried out in October 2011, were not carried out during peak months. Furthermore, section 3.6.5 of the Ecological Assessment also acknowledges that the upper creek may hold additional importance to wintering birds in harsh weather conditions, a fact we would agree with given its sheltered and relatively undisturbed location. This particularly important potential role of the creek does not appear to have been taken into consideration in the ES assessment, which evaluates the creek as being of only 'parish' to 'borough' importance (terms that are undefined in the ES and inconsistent with the IEEM-based evaluation set out within the Ecological Assessment).

Notwithstanding the fact that the proposals would result in the loss of an area of functioning SPA/Ramsar/SSSI habitat which could result in an adverse effect on the designated site interests, mudflats are also a priority habitat in the UK Biodiversity Action Plan. The UK Mudflats Habitat Action Plan ('**the HAP**') highlights that "*Land claim, for urban and transport infrastructure and for industry, has removed about 25% of Great Britain estuarine intertidal flats and up to 80% in some estuaries. Loss of mudflats reduces estuary productivity and may influence other estuary habitats such as saltmarsh*". The HAP therefore establishes a **no net loss** policy for mudflats in the UK. Clearly this application would contravene this policy.

Damage to intertidal habitat

The proposals further threaten to damage an area of *Zostera* (eelgrass) within the creek, which is acknowledged as an important feature of the European sites. Mitigation measures are proposed to minimise the loss/damage to the eelgrass beds from the moored boats, by preventing mooring on the south-west end of the pontoon. It is acknowledged in the Ecological Assessment that, despite this measure, there still be the loss of a small area of eelgrass bed estimated to be approximately 10m². However, the ES fails to make any assessment of the potentially greater risk of damage to the eelgrass beds as a result of boat movements to and from the development site. This is despite the April 2011 Ecological Assessment (ES Appendix 3.1) having identified damage from the recreational use of boats as a key impact on eelgrass beds.

Of further significant concern, while the ES states in a number of places that no dredging is proposed, the Design and Access Planning statement refers to "*bottom levelling*", which the applicant appears to consider should be acceptable to the SSSI (and presumably other statutory site) interests. If such measures form part of the proposals, they should be clearly set out in the application and the potential impacts assessed as part of the EIA and appropriate assessment. This important matter requires urgent clarification.

Disturbance to feeding/roosting at Gutner Point and Verner Common

The ES acknowledges the importance of the high tide roost sites at Gutner Point and Verner Common, which form part of the within the SPA/Ramsar/SSSI sites. As the Chichester Harbour Conservancy's Planning Committee report on the application highlights, these roosts hold year-round importance to passage and wintering birds. However, the Ecological Assessment rules out any potential impacts on these important features as a result of either land-based disturbance (predominantly from residents of the proposed new housing) or as a result of boat movements in and out of the creek. It appears that this conclusion is based on the applicant's own "disturbance investigation", involving just four passes along the Yachthaven channel on one date in March 2011, when fewer birds would have been present in the Harbour.

We do not consider this to be a robust assessment of this potentially significant impact. Our own observations of disturbance to these roosts suggests that the roosting birds are highly sensitive to close passing boat traffic, even non-motorised vessels. Nor does it take account of the potential combined effects of disturbance arising from other elements of the proposals, including the proposed residential development and the boatyard.

Furthermore, suggestions in the Ecological Assessment (section 4.4.2) that there will be "*few boat movements in and out of Yachthaven and very little public use*" is unsubstantiated and seems unlikely to be the case.

Mitigation measures

Despite assessing the majority of the potential impacts on the designated nature conservation features as insignificant, a number of mitigation measures are proposed within the ES. These include:

- A voluntary Code of Conduct for Yachthaven boat users
- Signage to reduce unlawful landing of boats on Gutner Point and Verner Common
- Habitat creation/management of sites of conservation interest within the developer's ownership
- Relinquishment of 7 moorings and replacement of 19 additional swing mooring permissions with fixed moorings

While we welcome efforts to offset the impacts of the development, we do not consider the proposed measures adequately address the serious potential risk to the designated sites presented by the application, which we consider has been significantly underestimated by the applicant.

The voluntary code of contact and signage is likely to have limited effect on boat-user behaviour, as our own experience from Langstone Harbour suggests. Further, the replacement of the 26 "*available*" swing moorings that, it is suggested, are impacting on the intertidal habitat is clearly misleading, as the supporting information (Ecological Assessment, section 3.5.6) acknowledges that only four such mooring were in use during the late Summer/Autumn period in 2011. Therefore the proposed 19 berth pontoon will represent a significant increase on the current mooring use, which is the baseline against which the proposals should be assessed.

The proposed improvements to adjacent land with existing and potential nature conservation value would not, in our view, offset the potential impacts from the development, and elements of the proposed habitat creation (such as the scrapes) could in fact be in conflict with the interests of the county wildlife site designation which cover that site.

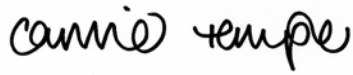
Conclusion

In conclusion, it is the RSPB's opinion that the proposals for the redevelopment of Yachthaven present a significant risk of damage to the adjoining nationally and internationally designated sites and their interest features, in addition to further potential impacts on sites on conservation importance outside of the statutory site boundaries. For the reasons set out above, we consider that these potential impacts have been inadequately assessed within the ES, and as a result ineffective measures have been proposed to mitigate the full potential effects of the proposals.

As a consequence, when considered *alone or in combination with other plans and projects*, we do not consider that the Council could reach a conclusion of *no adverse effect on the integrity* of the SPA/Ramsar site following an appropriate assessment (Regulation 61(5)). In the absence of there being *no alternatives* and *no imperative reasons of overriding public interest* (Regulation 62(1)), the application should therefore be refused under the provisions of the Habitats Regulations.

I hope that these comments are helpful in the Council's determination of this application. Please do get in touch should you wish to discuss any of our comments in further detail.

Yours sincerely

A handwritten signature in black ink that reads "Carrie Temple". The script is cursive and fluid.

Carrie Temple
Senior Conservation Officer

Cc Linda Park, Chichester Harbour Conservancy
Catherine McGuire, Hampshire & Isle of Wight Wildlife Trust
Simon Thompson, Natural England