

1.0 Reason for Committee Referral

- 1.1 Officer's Recommendation significantly contrary to Development Plan

2.0 The Site and Surroundings

- 2.1 Chichester Marina comprises an area of approximately 20 hectares within Chichester Harbour AONB and is adjacent to the both the harbour waterside and Chichester Canal, located to the east. Chichester Marina is a commercial site providing in-water berthing for boats. The site is accessed from the A286 Birdham Road to the east. A coastal path/PROW runs around the edge of the marina.
- 2.2 The application site is located close to the harbour waterside, positioned between the Chichester Canal (to the south) and the marina berths (to the north and east). The buildings have on-site parking and are accessed along the Chichester Marina approach road from the east. The Commercial Units at Chichester Marina are set within four blocks, titled "A" to "D" running from east to west.
- 2.3 The closest settlement is Birdham to the south-west.

3.0 The Proposal

- 3.1 The application is submitted under Section 73A of the Town and Country Planning Act 1990, to amend condition 3 of planning permission 12/00475/FUL.
- 3.2 Planning application 12/00475/FUL was granted on 28/06/2012 for the 'Demolition of three workshops/sheds for the comprehensive redevelopment of the South-West area of the marina comprising four purpose built buildings including marine related workshops, offices, storage, reprovion and extension of the retail (chandlery) and a cafe/restaurant together with an additional 23 car parking spaces, boat parking and storage and appropriate landscaping.'
- 3.3 Condition 3 of that planning permission states:
- a) Buildings A, B, and C shall be used for marine related uses only (with ancillary sales). These uses can include boat brokerage or B1, B2, B8; and for no other purpose (including any other purpose in Class B1, B2, B8 or A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes) (Amendment)(England) Order 2005 or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order).
 - b) Building D shall be used for
 - i) B1, B2, B8, marine related uses only (with ancillary sales) and/or
 - ii) a chandlery (to a maximum of 468 sqm) and/or
 - iii) a mixed use cafe/restaurant within use class A3/A4 (to a maximum of 244sqm) and for no other purpose (including any other purpose in Class B1, B2, B8 or A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Order 2005 or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order) and notwithstanding any change permitted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Reason: To accord with the terms of the application and to retain the provision of accommodation for marine related uses in compliance with policy C7 of the Chichester District Local Plan First Review 1999.

- 3.4 The Town and Country Planning (Use Classes) Order was amended in September 2020. The former A3 use now falls within use class E (b), and the former A4 use is now a sui generis use, which means it does not have a specific use classification. The current proposal seeks to amend part b)iii) of condition 3 to allow building D to have a mixed use cafe/restaurant (use class Eb) to a maximum of 365sqm.) i.e. an uplift in the permitted floor area by 121sqm (50% increase).

4.0 History

12/00475/FUL	PER106	Demolition of three workshops/sheds for the comprehensive redevelopment of the South-West area of the marina comprising four purpose built buildings including marine related workshops, offices, storage, reprovision and extension of the retail (chandlery) and a cafe/restaurant together with an additional 23 car parking spaces, boat parking and storage and appropriate landscaping.
12/03668/DOC	DOCDEC	Discharge of condition nos. 18, 20 and 21 from permission BI/12/00475/FUL.
12/03850/DOC	DOCDEC	Discharge of condition nos. 4, 7 and 24 from permission BI/12/00475/FUL.
12/03935/DOC	DOCDEC	Discharge of condition nos. 6, 11, 12 and 13 from permission BI/12/00475/FUL.
12/03959/DOC	DOCDEC	Discharge of Condition no. 5 from permission BI/12/00475/FUL.
13/03700/DOC	APPRET	Discharge of condition nos. 6, 9 and 24 of permission BI/12/00475/FUL (lighting, renewables and boundary treatment).
15/04153/FUL	WDN	Variation of condition 3b of permission BI/12/00475/FUL. To allow for the vacant unit to be occupied by a retail (A1) occupier.
21/00833/FUL	REF	Demolition of three workshops/sheds for the comprehensive redevelopment of the South-West area of the marina comprising four purpose built buildings including marine related workshops, offices, storage, reprovision and extension of the retail (chandlery) and a cafe/restaurant together with an additional 23

car parking spaces, boat parking and storage and appropriate landscaping - Variation of Condition 3 of planning permission BI/12/00475/FUL - Class use variation on buildings A to D allowing greater flexibility in the use of the existing business units, to enable retention and creation of employment opportunities.- Appeal Dismissed 18/07/2022

5.0 **Constraints**

Listed Building	NO
Conservation Area	NO
Rural Area	YES
AONB	YES
Tree Preservation Order	NO
EA Flood Zone	
- Flood Zone 2	YES
- Flood Zone 3	YES
Historic Parks and Gardens	NO

6.0 **Representations and Consultations**

6.1 **Birdham Parish Council**

Birdham Parish Council has no objection to this application on condition that the maximum space is limited to 365 square metres and Birdham Parish Council endorses the comments of the Harbour Conservancy.

6.2 **Chichester Harbour Conservancy**

No objection with conditions.

- 1) Limit the proposed use to the area shown on the submitted plan and no greater than 365sqm (as set out in the application)
- 2) Any new external lighting to be agreed and to accord with the AONB's Dark Skies policy and avoid light spillage beyond the site.

6.3 **Southern Water**

Southern Water has no objection to above variation of condition 3.

Comments provided on foul drainage connections to public foul sewer.

The applicant should be advised that a wastewater grease trap should be provided on the kitchen waste pipe or drain installed and maintained by the owner or operator of the premises. It should be noted that under the Water Industry Act 1991 it is an offence to throw, empty, turn or permit to be thrown or emptied or to pass into any drain or sewer connecting with a public sewer any matter likely to injure the sewer or drain or to interfere with the free flow of its contents.

6.4 **Natural England**

Natural England currently has no comment to make on the variation of condition 3.

6.5 WSCC Highways

The proposal includes to extend operations to utilise D5 in addition Unit D6. Unit D5 is proposed to cater for the casual visitor whereas Unit D6 will cater for those who want a longer stay and a more premium service. A similar Variation of Condition 3 application was made under application 21/00833/FUL for which no objection was raised from WSCC Highways.

The floor areas and associated car parking will stay the same as in application BI/12/00475/FUL. Whilst there would be slight change in use this is still essentially retail and therefore the transport impact would stay the same. Therefore, the LHA would raise no objection to this application.

6.6 WSCC Fire and Rescue

Additional comments received 12/10/2022

As identified in in Approved Document B (AD-B) - Volume 2: 2019 edition B5 section 16 a building requires additional fire hydrants if both of the following apply; has a compartment area more than 280sqm and erected more than 100m from the nearest fire hydrant will require an additional fire hydrant. What it does not say is what is required if the compartment size is less than 280sqm but is more than 100m away from a fire hydrant. A fire appliance will still require a supply of water to extinguish any property on fire, without a supply of water puts the property at greater risk form fire.

With the premises being more than 100m away from the nearest fire hydrant I wanted to make the owner/occupier aware of this fact and to maybe consider an alternative supply of water for fire fighting such as the Chichester Ship canal that is considerably nearer to the property but would need to comply with the requirements identified in (AD-B) - Volume 2: 2019 edition B5 section 16 for alternative supply of water.

Original comments received 14/07/2022

The nearest fire hydrant to this site is 240 metres away, 150 metres further than the 90 metre distance required for a commercial premises. If an alternative supply of water for firefighting is to be considered it will need to conform with the details identified in Approved Document - B (AD-B) Volume 2 2019 edition: B5 section 16.

6.7 CDC Archaeology Officer

No objection.

6.8 CDC Drainage Engineer

No objection.

6.9 CDC Environmental Health Officer

No comments received.

6.10 CDC Environmental Strategy Officer

No objection subject to condition 6 of 12/00475/FUL being reimposed (lighting scheme).

6.11 CDC Planning Policy

Additional comment received 27/09/2022

The applicants' supporting statement, in particular, their contention that the proposed development will "complement the existing offer within the harbour and will provide an improved visitor experience....enhance the local economy and will provide further employment in the area" would appear to address the requirements of policies within the Birdham Neighbourhood Plan. In particular, Policy 23 which requires that proposals for development must not have a significantly adverse impact on the marine businesses and Policy 22 which provides support for the small-scale expansion of existing businesses where they deliver local employment opportunities. This application involves a loss of approximately 100 square metres of employment floorspace to a use already permitted under planning consent 12/00475/FUL.

As detailed in my last response, the adopted Local Plan Appendix E sets out the marketing evidence requirements where a proposal would lead to the loss of an existing business use class to an alternative use. The unit which the applicants propose to extend their café business into has been vacant for approximately 6 months and the applicants have now produced evidence showing the unit has been actively marketed during this period as well as providing comparison marketing of other units and an enquiry log. There does not, however, appear to be any activity since July in the enquiry log supplied, and it would be helpful if the applicants could provide some commentary on this.

As currently provided, the marketing evidence appears to demonstrate that in the current economic climate there is a low level of interest in the unit, although it has only been marketed for a relatively short period in comparison with that suggested in the guidance. Equally, however, it is recognised there is a balance to be considered between the unit continuing to remain vacant, and the overall impact of its loss and contribution to the wider economy of this area. If it is considered that in taking account of the wider picture, in other words that the expansion of the neighbouring existing use into this unit is preferable to its continued marketing and vacancy, then a policy objection would no longer be raised.

Original Comment received 13/09/2022

The site is located outside the Birdham settlement boundary and within the Chichester Harbour AONB. Therefore, Policy 45 applies which seeks to ensure that development would only be granted, subject to certain criteria, where it requires a countryside location and meets essential, small scale and local need which cannot be met within or immediately adjacent to existing settlements. Policy 43 concerns development within the Chichester Harbour AONB and requires development proposals to be appropriate to the economic, social and environmental well-being of the area as well as meet the policy aims of the Chichester Harbour AONB Management Plan. As the site is an existing employment site, Policy 26 also applies.

Policy 15 - "Rural Area" refers primarily to the re-use of farm and rural buildings although requires that the proposed re-use would not cause any unacceptable conflict with

agriculture, horticultural and other land and water-based economic and leisure activities. Policy 22 provides support for the conversion of existing buildings and small-scale expansion of existing business, horticultural or agricultural premises especially those that deliver local employment opportunities, Policy 23 supports the retention of all business related to tourism, marine, horticulture and agriculture against any proposals for redevelopment or for a change of use in accordance with Local Plan Policies 2 and 26. Proposals for development must not have a significantly adverse impact on the marine businesses.

The adopted Local Plan and made Neighbourhood Plan represent the Development Plan and the starting point for the consideration of any planning application. This application seeks to vary condition 3 of the planning consent 12/00475/FUL granted on 28 June 2012. Policy 26 of the adopted Local Plan supports alternative uses on land or floorspace currently or previously in employment generating uses where it has been demonstrated that the site is no longer required and is unlikely to be re-used or redeveloped for employment uses. Paragraph 16.7 of the policy recognises that it may sometimes be appropriate to allow for alternative non-employment uses subject to clear evidence that the site is no longer required for business uses. Applicants are required to provide supporting evidence in accordance with the guidance in Appendix E - the marketing process is set out at paragraph E5. Paragraph 16.8 states that given the limited opportunities for employment uses with direct access to water, particular scrutiny will be given to marketing evidence for marine related employment sites with the aim of preserving these uses. Appendix E, paragraph E6, states that where a planning application may lead to the loss of an existing site currently in business use class (B1-B8) or similar sui generis uses to alternative uses, supporting information will be required to demonstrate that the site has been vacant for some time, has not been made deliberately unviable; and has been actively marketed for business or similar uses at a realistic price for a minimum of 2 years or a reasonable period.

In relation to Policy 43 and the requirement to meet the policy aims of the Chichester Harbour Management Plan, Planning Consideration PP02 Safeguarding Marine Enterprise requires an applicant to demonstrate that a site is not fit-for-purpose for a marine-related business and that any marine-related business use is unviable. A sequential approach in relation to marketing is set out within the planning consideration and requires an initial 12 months of marketing for marine-related business prior to a planning application being submitted.

This application involves a loss of approximately 100 square metres of employment floorspace, namely Unit D5 which has been vacant for approximately 6 months. The applicants appear to intend to expand the existing café enterprise in Unit D6 with a further coffee shop in the vacant unit D5. As their marketing evidence, the applicants provide links to Henry Adams' website where D5 is currently marketed and state that agents "have been seeking to secure a marine related use..... with no success". However, no further details are supplied in accordance with E5 of Appendix E such as confirmation by the marketing agent that the premises has been appropriately and extensively marketed; how interest in the site has been objectively dealt with; details that the marketing price is realistic; or an enquiry log.

As stated above, the adopted Local Plan and made Neighbourhood Plan represent the Development Plan and the starting point for the consideration of any planning application. We appreciate however, the significant difficulties faced in the current economic climate

and therefore, provided that adequate marketing evidence can be produced in the terms set out above, there would no policy objection in principle to this application.

6.12 CDC Economic Development

The Economic Development Service supports this application.

The economic benefits of the proposed development are positive as it would safeguard 30 existing jobs but is projected to create an additional 10 new jobs.

Much like the high street, marinas over the country are changing. While the core of operations will be marine based, the focus of marinas is increasingly geared towards becoming attractive to non-boat owners and more leisure and hospitality based.

The vibrancy and longevity of marinas as leisure locations, not just for boat owners, will depend on the ability to attract the right mix of businesses, boat owners and visitors to the site and having strong catering and hospitality offer is a key requirement and important revenue stream for the marina.

Premier Marinas want to remain relevant, and successful but they also realise the importance of making sure that services that boat owners would expect are on site, which would fit into the current marine use.

6.13 Third Party Representations

No third party letters have been received.

6.14 Applicants supporting comments

- The unit has been vacant since 1st April 2022.
- The landlord Premier Marinas currently has four vacant units at Chichester marina and have appointed Henry Adams as their agents who have been seeking to secure a marine related use for these units, in some cases, in excess of two years with no success. Also Premier Marinas themselves have been undertaking similar marketing on their own website.
- The café is an ancillary marine related business - as stated in the officer report for BI/12/00475/FUL
- The proposal would result in the employment of 10 additional staff, compared with 1 person when the unit was used as clothing retail & accessory shop use and selling of ice creams.
- It is proposed to separate customers who wish to use the existing premises as a café/restaurant from those who wish to use the premises as a coffee shop/takeaway
- Currently the premises have evolved to cater for both the casual visitor and those wishing to use the facility for a more substantial meal. This has caused difficulties both on the operation of the business and for visitors wishing to secure the service they require.
- Unit D5 is proposed to cater for the casual visitor whilst Unit D6 will cater for those who want a longer stay and a more premium service.

7.0 Planning Policy

The Development Plan

- 7.1 The Development Plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029, the CDC Site Allocation Development Plan Document and all made neighbourhood plans. The Birdham Neighbourhood Plan was made on the 19 July 2016 and forms part of the Development Plan against which applications must be considered.
- 7.2 The principal planning policies relevant to the consideration of this application are as follows:

Chichester Local Plan: Key Policies 2014-2029

Policy 1: Presumption in Favour of Sustainable Development
Policy 2: Development Strategy and Settlement Hierarchy
Policy 3: The Economy and Employment Provision
Policy 26: Existing Employment Sites
Policy 30: Built Tourist and Leisure Development
Policy 39: Transport, Accessibility and Parking
Policy 40: Sustainable Design and Construction
Policy 42: Flood Risk and Water Management
Policy 43: Chichester Harbour Area of Outstanding Natural Beauty (AONB)
Policy 44: Development around the Coast
Policy 45: Development in the Countryside
Policy 46: Alterations, Change of Use and/or Re-use of Existing Buildings in the Countryside
Policy 47: Heritage and Design
Policy 48: Natural Environment
Policy 49: Biodiversity
Policy 50: Development and Disturbance of Birds in Chichester and Langstone Harbours Special Protection Areas

Birdham Neighbourhood Plan

Policy 2: Archaeological Sites
Policy 3: Habitat Sites
Policy 4: Landscape Character and Important Views
Policy 5: Light Pollution
Policy 6: Biodiversity
Policy 9: Traffic Impact
Policy 10: Footpaths & Cycle Paths
Policy 15: Rural Area Policy
Policy 18: Flood Risk Assessment
Policy 20: Surface Water Run-off
Policy 22: Development for Business Use
Policy 23: Retention of Businesses

Chichester Local Plan Review Preferred Approach 2016 - 2035

- 7.3 Work on the review of the adopted Local Plan to consider the development needs of the Chichester Plan Area through to 2036 is now well underway. Consultation on a Preferred Approach Local Plan has taken place and following detailed consideration of all responses to the consultation, it is intended that the Council will publish a Submission Local Plan under Regulation 19 in 2022. Following consultation, the Submission Local Plan will be submitted to the Secretary of State for independent examination. In accordance with the Local Development Scheme, it is anticipated that the new Plan will be adopted by the Council in 2023. However, at this stage, it is considered that very limited weight can be attached to the policies contained within the Local Plan Review.

National Policy and Guidance

- 7.4 Government planning policy now comprises the revised National Planning Policy Framework (NPPF 2021), which took effect from 20 July 2021. Paragraph 11 of the revised Framework states that plans and decisions should apply a presumption in favour of sustainable development, and for decision-taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay; or
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 7.5 Consideration should also be given to the following paragraph and sections: 2, 4, 6, 8, 9, 11, 12, 14, 15 and 16. The relevant paragraphs of the National Planning Practice Guidance have also been taken into account.

Other Local Policy and Guidance

- 7.6 The following Supplementary Planning Documents are material to the determination of this planning application:
- The Chichester Harbour Management Plan Third Review (2019 - 2024)
 - The Chichester Harbour AONB Joint SPD (2017)
 - Chichester Harbour AONB Landscape Character Assessment
- 7.7 The aims and objectives of the Chichester in Partnership Community Strategy 2016-2029 which are relevant and material to the determination of this planning application are:
- Maintain low levels of unemployment in the district
 - Prepare people of all ages and abilities for the work place and support the development of life skills
 - Develop a local workforce that meets the needs of local employers
 - Support local businesses to grow and become engaged with local communities
 - Influence local policies in order to conserve and enhance the qualities and distinctiveness of our area

8.0 Planning Comments

8.1 The main issues arising from this proposal are:

- i. Principle of development, planning policy and planning history
- ii. Loss of marine enterprise and harm to the local economy
- iii. Impact on the AONB

i. Principle of development, planning policy and planning history

8.2 The principle of the development of 'Demolition of three workshops/sheds for the comprehensive redevelopment of the South-West area of the marina comprising four purpose built buildings including marine related workshops, offices, storage, reprovision and extension of the retail (chandlery) and a cafe/restaurant together with an additional 23 car parking spaces, boat parking and storage and appropriate landscaping' was established by the granting of planning permission 12/00475/FUL. Whilst the applicant is applying for a variation of Condition 3 of that permission, under Section 73A of the Town and Country Planning Act 1990 (as amended), this is in effect a fresh planning application. The development approved under application 12/00475/FUL has been completed and occupied for some time. The current application seeks to vary part of the approved use of the development.

Relevant changes to Planning Policy

- 8.3 The original planning condition was imposed to safeguard waterside sites for boating related facilities in accordance with Policy C7 of the Chichester District Local Plan First Review 1999.
- 8.4 Policy C7 of the Chichester District Local Plan First Review (1997) stated: 'In order to safeguard waterside sites for boating related facilities, the development or redevelopment of boating and marina sites will only be permitted for uses associated with boat building, fitting out, maintenance and repair of boats and ancillary uses'.
- 8.5 The justification behind the Policy (C7) stated (inter alia) that existing boatyards are situated on prime waterfront sites which makes them attractive for redevelopment for alternative uses. Loss of boat building, fitting out, repair, maintenance and ancillary services would not be in the interests of the harbour users or the local economy. In addition, loss of boatyard capacity could create demand for greenfield extensions to the remaining active boatyards. Changes of use to other users not dependant on a waterside location is also wasteful of that resource and damaging to the character of the harbour. Non-marine industrial activities could also generate more traffic on the narrow roads within the AONB leading to the boatyards.
- 8.6 Since the determination of planning application 12/00475/FUL, the Chichester District Local Plan: Key Policies 2014-2029 (CLP) has been adopted and the policies contained in the Chichester District Local Plan First Review (1997) no longer apply.
- 8.7 The current CLP includes Policies 26 and 43. Policy 26 seeks to safeguard existing employment sites and supports more efficient use of underused employment sites. Paragraph 16.8 of the supporting text for Policy 26 states that 'Given the limited opportunities for employment uses with direct access to water, particular scrutiny will be

given to the marketing evidence for marine related employment sites with the aim of preserving these uses'.

- 8.8 Policy 43 of the CLP relates to the AONB, which amongst other things seeks to ensure that development accords with the policy aims of the Chichester Harbour Management Plan (CHMP).
- 8.9 Principle PPO2 of the CHMP supports 'the retention and continued development of marine business uses and only support a change of use if the site is demonstrated as not being fit-for-purpose for a marine related business or being unviable. In all cases, proposals should not have an adverse impact on the landscape and nature conservation interests of the AONB.' Changes of Use applications should demonstrate a sequential test approach to marketing.
- 8.10 Policy 13 of the CHMP seeks to ensure that Chichester Harbour is a place where marine businesses prosper. In the supporting text it sets out that 'Many businesses support the Harbour's use as a recreational destination, with employment in boat building, services and visitor facilities'...'The Conservancy and its partners support sustainable tourism. This is when visitors make a positive impact on the economy, society, and environment.'
- 8.11 The Birdham Neighbourhood Plan (BNP) was made on 19th July 2016. Policy 22 of the BNP states that support will be given for 'small-scale development and expansion of existing businesses'. Policy 23 of the BNP states that 'Proposals that adversely affect businesses related to the marine heritage of Birdham (i.e. Birdham Pool & Chichester Marina) will be discouraged. Support will be given to the retention of all business related to tourism, marine, horticulture and agriculture against any proposals for redevelopment or for a change of use in accordance with Local Plan Policies 3 and 26. Accordingly, proposals for development must not have a significantly adverse impact on the tourism, marine, farming and horticultural businesses.'
- 8.12 The Chichester Harbour AONB Joint SPD is dated 17th May 2017. Paragraph 24.1 of the SPD states 'Marine and tourism uses are closely associated with the special qualities of the AONB. Once sites are lost from marine-related use it is extremely unlikely that they will be replaced by new ones. It is therefore vital that marine sites are retained for the long-term viability of the Chichester Harbour's marine infrastructure and the boats and businesses that depend on it.
- 8.13 The NPPF has been updated several times since the determination of 12/00475/FUL (latest revision 2021) and includes amendments to the presumption in favour of sustainable development, greater focus on making effective use of land and support for a prosperous rural economy.
- 8.14 As stated in paragraph 3.4 of this report the Town and Country Planning (Use Class) Order 1987 (as amended) was updated in September 2020. Class A was revoked. Class A3 was replaced with Use Class E(b). Class A4/5 uses were not covered by Use Class E and became defined as 'Sui Generis'. Class B1 was revoked and effectively replaced by Class E(g).

Relevant Planning History

- 8.15 Planning Application 21/00833/FUL previously sought to vary condition 3 of 12/00475/FUL to allow 'Class use variation' on buildings A, B, C and D allowing greater flexibility in the use of the existing business units, to enable retention and creation of employment opportunities.' This application was refused on 29/06/2021 for the following reason:
1. The application site is located on the harbour waterside, within the Chichester and Langstone Harbour Area of Outstanding Natural Beauty (AONB). The removal of the marine related only occupancy condition relating to the commercial and business units (buildings A-D inclusive) would be likely to result in the unacceptable loss, or potential loss, of marine-related floor space along the harbour waterside site, where marine uses are traditionally and practically best placed, which would have a significant adverse impact on the marine industry in this location. Furthermore, the removal of businesses that have a relationship with the waterside environment would fail to conserve and enhance the character of the AONB. Inadequate marketing evidence has been provided to justify the removal the marine related only occupancy condition in relation to all units within buildings A-D inclusive. The proposal is therefore contrary to Appendix E of the Chichester Local Plan 2014-2029, Policy 23 of the Birdham Neighbourhood Plan, AONB planning principles PP01 and PP02 and policy 13 of the Chichester Harbour Management Plan Third Review (2019 - 2024) and policy 24 of the Chichester Harbour AONB Joint SPD (2017).
- 8.16 This application was subsequently dismissed at appeal on 18/07/2022. The Planning Inspector concluded that:
- 8.17 Paragraph 7 ...'it is relevant to look at levels of vacancy and the marketing that has been undertaken to secure marine-based tenants. The Council's decision refers to Appendix E in the LP, which relates to marketing requirements in connection with various policies. These do not include policy 43 and I am not convinced that the provisions of Appendix E are particularly pertinent in the present case. Of more relevance is the MP and the marketing expectations in the planning principle PP02.'
- 8.18 Paragraph 9 ...'apart from unit D7 and possibly unit A2, there is insufficient evidence to justify the Appellant's assertion about long term vacancy indicating a lack of demand. I can appreciate that such vacancy is not beneficial to the vitality and viability of the marina enterprise as a whole or this group of business uses in particular. In such circumstances there could therefore be justification for adopting a more flexible approach for unit D7 and possibly unit A2 in accordance with PP02 in the MP. This suggests that a mix of marine related business use and other appropriate commercial or employment uses should be explored. '...
- 8.19 Paragraph 10 'The proposal as it stands would allow any of the units to be operated as B2, B8 and E class1 uses without any marketing at all.'...' The MP and SPD indicate that once a change has occurred, a marine-based use is unlikely to be re-established.'
- 8.20 Paragraph 11 ...' the condition is reasonable and necessary and that its variation as proposed would be detrimental to the local economy and fail to conserve the character of the Chichester Harbour AONB. This would be contrary to policy 43 in the LP and policy 23 in the NP, which seem to me to be the most important policies in this case. The proposal would also fail to accord with the policy and principles in the MP and the SPD, which are material considerations to which I give significant weight in this case'

- 8.21 Paragraph 13 'It is acknowledged that no external changes would necessarily be required to the buildings. However, the importance of the marine-based enterprises relates to the character of the AONB.'
- 8.22 Unit D7, referred to in the appeal decision for 21/00833/FUL, is located in the roof space of Building D. (N.B. the numbering of units on the original planning application differ that to the numbering on site, the unit marketed as D7 is Unit D6 on the approved plans). The submitted indicative plans accompanying this current planning application show that the existing café is located in Unit D6 with back of house in Unit D4 (*Unit D1 and part of Unit D3 on the approved plans*). This planning application seeks to extend the café into Unit D5 (*Unit D2 and part of Unit D3 on the approved plans*) which is located at ground floor directly adjacent to the existing café.
- 8.23 It is noted that approximately 230m to the east of the application site along the access road (halfway along the southern marina edge), planning permission was granted under planning application 15/00339/FUL for the change of use of an existing restaurant on the site to residential flats. As part of the supporting information submitted it was set out that the commercial activity was now focused to the west of the marina (the area of the current planning application) and therefore the existing restaurant use in the eastern part of the site was no longer viable.
- 8.24 Having regard to the planning history and current policies the main considerations in the determination of this application are:
- Whether the proposal would result in the unacceptable loss of marine enterprise that would be harmful to the local economy
 - Whether the proposed use would conserve the character of the Chichester Harbour AONB.

ii. Loss of marine enterprise and harm to the local economy

Loss of Marine Enterprise

- 8.25 The proposed café would not constitute a marine enterprise. The applicant has put forward the argument that the café is ancillary to the wider marine related use of the site. Officers consider that the café would complement the existing marine uses however the café would not necessarily be exclusively used by the marina occupiers. Therefore, there would be a loss of marine enterprise.
- 8.26 The applicant has advised that the unit proposed for the expanded café has been vacant since 1st April 2022. As such the unit has not been marketed for marine related uses for a minimum of two years. The proposal is therefore contrary to the requirements of Appendix E and Policy 26 of the CLP. Furthermore, the marketing requirements of PPO2 of the CHMP have not been met.
- 8.27 S38(b) of the Planning and Compulsory Purchase Act 2004 states that the determination of planning applications 'must be made in accordance with the plan unless material considerations indicate otherwise.'

8.28 Whilst the submitted indicative plans show the proposed extension of the café would be at ground floor level, the original condition (3) did not specify which specific unit the café shall be sited in. Instead, the restrictions on the floor area of the café were building wide. Furthermore, the plans listed in condition 2 of 12/00475/FUL do not specify the location of the café within building D. Therefore, in principle the floor area of the café could be provided in any part of building D. It is noted that in the appeal for 21/00833/FUL, the planning inspector was satisfied that the unit contained within the roof space of Building D had been marketed for a sufficient length of time. Therefore, a pragmatic approach could be taken when considering the variation of the part of the condition that relates to the entirety of building D, subject to there being no material harm caused by the larger café area.

8.29 Whilst there would be a direct loss of marine enterprise by 121sqm, officers are satisfied that the proposed extension of the café would not prejudice the operations of marine enterprises across the wider marina and would not result in a further indirect loss of marine enterprise. In addition, as accepted above, it would also complement the existing marine uses.

Harm to the local economy

8.30 The Council's Planning Policy Team has commented there is a balance to be considered between the unit continuing to remain vacant, and the overall impact of its loss and contribution to the wider economy of this area.

8.31 The greater hospitality provision could attract more visitors to the area. It is accepted that tourism does have economic benefits to the local economy.

8.32 The application receives the support of the Council's Economic Development Team, who note that the proposed expansion of the café would create 10 jobs. Furthermore, the Council's Economic Development Team has commented that in order to remain relevant and successful the focus of marinas across the country are increasingly geared towards becoming attractive to non-boat owners and more leisure and hospitality based.

8.33 The proposal constitutes a departure from the development plan as it would be contrary to the requirements of Appendix E and Policy 26 of the CLP. However, on balance the loss of marine enterprise is acceptable in the specific instance. The proposed use would complement and not prejudice the marine enterprises within the wider marina. Furthermore, there would be no significant harm to the local economy due to the job creation and contribution to tourism.

iii. Impact on the AONB

8.34 The proposed variation of condition relates to the use of floor space only and there would be no operational development, as such, there would be no physical impact on the AONB. Nonetheless, as set out in the previous sections, the proposed change of use could have an impact on the character of the AONB. The proposed café could attract more visitors to the area, however the vast majority of floor space originally permitted under application 12/00475/FUL would remain as marine related. Therefore, it is considered that the impact on the character of the area would be minimal. Furthermore, it is noted that the marina previously had a restaurant further east that has now been converted to residential flats (reference 15/00339/FUL).

- 8.35 The Chichester Harbour Conservancy has raised no objection subject to conditions. The floor space of the café would be restricted by the amended condition. With regards to lighting there was an existing condition on planning permission 12/00475/FUL (original condition 6) which required details of illumination to be agreed with the local planning authority, which was discharged under application 13/03700/DOC. This condition is recommended to be retained on the new decision notice (new condition 4) requiring the approved details to be complied with.
- 8.36 Having regard to the above, it is considered that the proposal would conserve the character of the Chichester Harbour AONB, and the development would be in accordance with Policy 43 of the CLP.

Planning Obligations

- 8.37 Planning permission 12/00475/FUL was subject to a S106 agreement. This was in the form of a Unilateral Undertaking that required a public art contribution and bus stop contribution prior to the first occupation of the development. These obligations have been fulfilled and as such, no deed of variation is required in this instance.

CIL

- 8.38 There is no additional floor space, as such there will be no implications in respect of CIL requirements.

Significant Conditions

- 8.39 All relevant conditions from 12/00475/FUL are recommended to be carried forward and amended where appropriate to reflect those that have been discharged.
- 8.40 Condition 1 of 12/00475/FUL related to the expiry date of the planning permission, given that the development has been implemented it is not appropriate to reapply this condition. Likewise, conditions 4 (materials), 7 (landscaping), 8 (landscaping), 10 (construction hours), 11 (Demolition and Construction Method Statement and Noise Management Plan), 12 (method of piling), 13 (archaeological investigation), 21-23 inclusive (contamination) and 24 (screening walls) are no longer applicable as they have been complied with and there are no ongoing compliance requirements.
- 8.41 Condition 3 of the original permission has been amended to reflect the amended Town and Country Planning (Use Class) Order. Reference to B1 has been changed to E(g) as well as reference to use class A3/A4 being replaced by class E(b). This would be condition 3 on the new decision notice.
- 8.42 In response to Southern Water's comments an additional condition and informative have been added to ensure that a wastewater grease trap is provided on the kitchen waste pipes or drains.

Conclusion

- 8.43 The proposal constitutes a departure from the development plan as it would be contrary to the requirements of Policy 26 and Appendix E of the CLP. However, on balance the loss

of marine enterprise is acceptable in the specific instance. The proposed use would complement and not prejudice the marine enterprises within the wider marina. Furthermore, there would be no significant harm to the local economy due to the job creation and its contribution to tourism. The proposed use would conserve the character of the Chichester Harbour AONB.

- 8.44 On balance the proposal to vary condition 3 of 12/00475/FUL is considered acceptable and therefore the application is recommended for approval.

Human Rights

- 8.45 In reaching this conclusion the Human Rights of the applicants and nearby occupiers have been taken into account when reaching this recommendation and it is concluded that the recommendation to permit is justified and proportionate.

RECOMMENDATION

PERMIT subject to the following conditions and informatives:-

- 1) The development hereby permitted shall be carried out in accordance with the approved plans:

28819-A-02-S-001 rev T-1, A-bIA-03-P-00-001 Rev T, A-bIA-03-P-01-001 Rev T, A-bIA-27-P-001 Rev T, A-bIB-03-P-00-001 Rev T, A-bIB-27-P-001 Rev T, A-bIC-03-P-00-001 Rev T, A-bIC-03-P-01-001 Rev T, A-bIC-27-P-001 Rev T, A-bID-03-P-00-001 Rev T, A-bID-03-P-01-001 Rev T, A-bID-27-P-001 Rev T, A-bIA-05-E-001 Rev T, A-bIB-05-E-001 Rev T, A-bIC-05-E-001 Rev T, A-bID-05-E-001 Rev T, A-04-D-101 Rev T, A-04-D-102 Rev T, A-02-D-101 Rev T, A-02-D-103 Rev T, 0004-PL-3D-NW, 0004-PL-3D-SE, 08-881-205 P2 , 0004-PL-GA-00-CONTEXT and DD2205-01 Rev AB, DD2205-02 Rev AB.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2) Prior to the first use of the café hereby permitted a wastewater grease trap shall be installed on all the kitchen waste pipes or drains and maintained by the owner or operator of the premises thereafter.

Reason: To ensure adequate foul drainage.

- 3) a) Buildings A, B, and C shall be used for marine related uses only (with ancillary sales). These uses can include boat brokerage or E(g), B2, B8; and for no other purpose (including any other purpose in Class B2, B8 or E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Order 2005 or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order).

b) Building D shall be used for

- i) E(g), B2, B8, marine related uses only (with ancillary sales) and/or
- ii) a chandlery (to a maximum of 468 sqm) and/or
- iii) a mixed use cafe/restaurant (use class E(b)) to a maximum of 365sqm.)

and for no other purpose (including any other purpose in Class B2, B8 or E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order) and notwithstanding any change permitted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Reason: To accord with the terms of the application and to retain the provision of accommodation for marine related uses in compliance with policies 26 and 43 of the Chichester District Local Plan: Key Policies 2014-2029, Principle PPO2 and policy 13 of the Chichester Harbour Management Plan Third Review (2019 - 2024) and policy 23 of the Birdham Neighbourhood Plan 2016.

4) There shall be no departure from the permitted method of illumination of the car parking areas and any external lighting within the application site, pursuant to condition 6 of planning permission 12/00475/FUL (under application 13/03700/DOC), unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of amenity and safeguarding bats.

5) A minimum of 10% on-site renewable energy shall be retained and maintained in full accordance with the details specified in the submitted "Interim Statement Compliance Form" submitted with planning application 12/00475/FUL.

Reason: In the interest of sustainable development.

6) The parking and turning areas shown on approved plan number 28819-A-02-S-001 rev T-1 shall be used and retained exclusively for their designated purpose.

Reason: To ensure a satisfactory standard of development.

7) Notwithstanding the submitted details, this permission does not authorise any removal of vegetation adjacent to the canal and any alteration to the surfacing of the public rights of way unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of ecology and safeguarding the PROW and not to prejudice the users of the PROW.

8) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer or watercourse or discharging into the ground. Associated pipework shall be located above ground where possible and protected from accidental damage.

Reason: To safeguard the amenities of the area and of neighbouring properties and to prevent pollution.

9) The foul drainage scheme shall be maintained in accordance with the approved details and plan 09-881-S102 P3 submitted pursuant to condition 18 of planning permission 12/00475/FUL (under application 12/03668/DOC).

Reason: To ensure the protection of water quality at Chichester Harbour, a European designated site and compliance with the Water Framework Directive (WFD) and in accordance with the NPPF.

10) The mitigation measures detailed within section 7.1 of the approved Flood Risk Assessment (FRA) produced by URS Infrastructure and Environment UK Ltd (Report ref. MARP0001) and dated 03/08/2011 shall be retained and finished floor levels shall be retained no lower than 4.4m above Ordnance Datum (AOD), as specified in section 6.1 of the FRA.

Reason: In the interest of mitigating flood risk

11) The surface water drainage scheme shall be maintained and managed in accordance with the approved details and plan 09-881-S101 P2 submitted pursuant to condition 20 of planning permission 12/00475/FUL (under application 12/03668/DOC).

Reason: In the interest of mitigating flood risk

12) No external plant or machinery shall be erected or installed within the site without the prior written approval of the Local Planning Authority following the submission of full noise and visual details.

Reason: The mechanical installation details submitted for external condenser units, heat pumps etc does not indicate the proposed location or appearance of such units and the visual and noise impacts would need to be assessed.

13) Bird and bat boxes shall be retained as set out in Appendix 3 of the Environmental Management Plan prepared by URS and dated October 2012, submitted pursuant to condition 5 of planning permission 12/00475/FUL (under application 12/03959/DOC).

Reason: To ensure appropriate ecological mitigation.

INFORMATIVES

1) The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

2) The applicant is advised that under the Water Industry Act 1991 it is an offence to throw, empty, turn or permit to be thrown or emptied or to pass into any drain or sewer connecting with a public sewer any matter likely to injure the sewer or drain or to interfere with the free flow of its contents.

3) The applicant is advised that the nearest fire hydrant to this site is 240 metres away, 150 metres further than the 90 metre distance required for a commercial premises. An alternative supply of water for firefighting will need to conform with the details identified in Approved Document - B (AD-B) Volume 2 2019 edition: B5 section 16.

For further information on this application please contact Kayleigh Taylor on 01243 534734.

To view the application use the following link - <https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=REL7H8ERIIIE00>