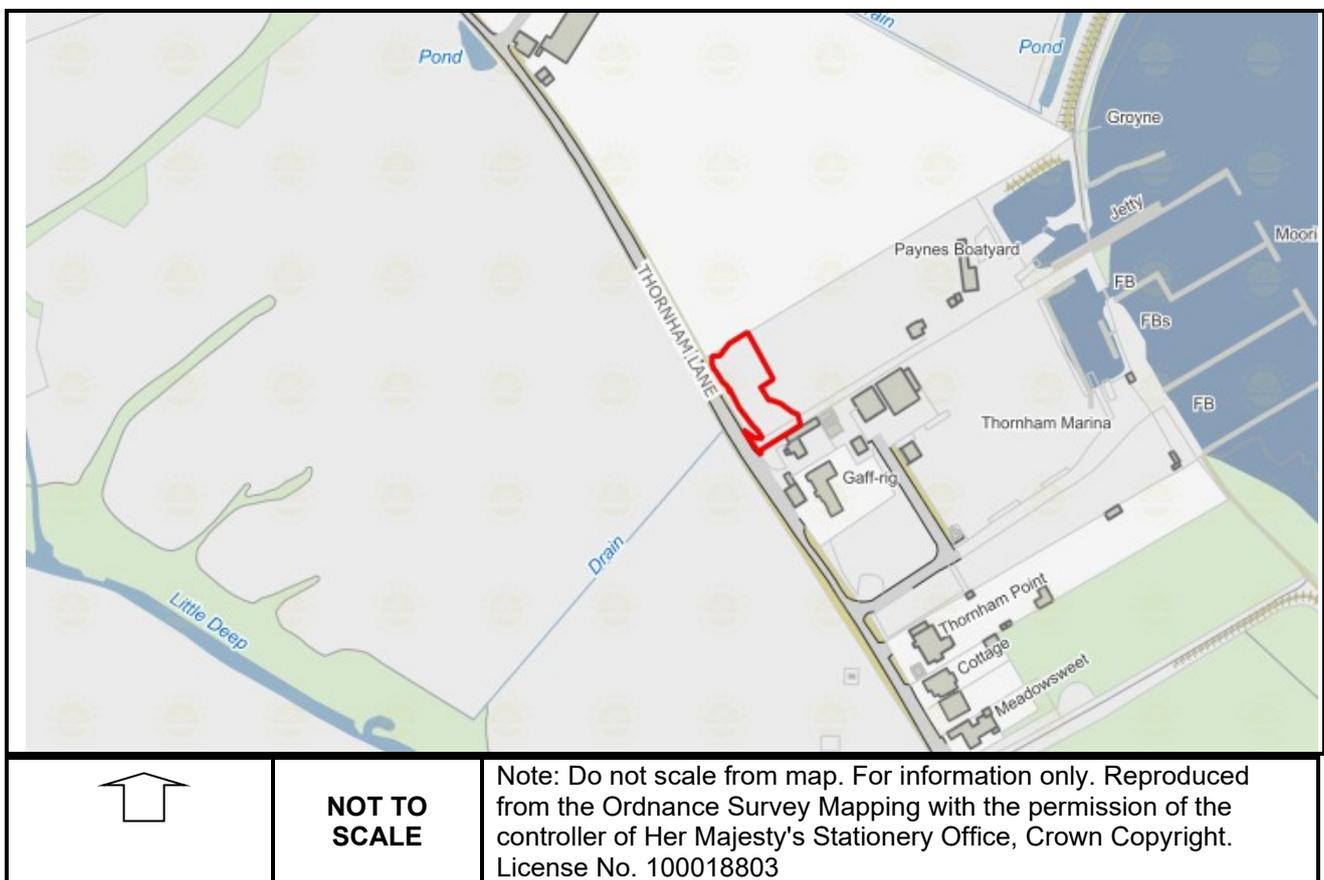


Parish: Southbourne	Ward: Southbourne
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**SB/22/03137/FUL**

<b>Proposal</b>	Tied dwelling to serve Paynes Boatyard, including change use of land from commercial to residential.		
<b>Site</b>	Paynes Boatyard Thornham Lane Southbourne West Sussex PO10 8DD		
<b>Map Ref</b>	(E) 476319 (N) 104646		
<b>Applicant</b>	Mrs Victoria Douglas	<b>Agent</b>	

**RECOMMENDATION TO REFUSE**



**1.0 Reason for Committee Referral**

- 1.1 Red Card: Cllr Bangert: Important information/opinion to raise in debate (family-owned business for over 50 years.)

## **2.0 The Site and Surroundings**

- 2.1 The application site is located to the south-west of Thornham Lane outside of a settlement boundary, within the Chichester Harbour Area of Outstanding Natural Beauty and within Flood Zone 3 where the risk of flooding is highest.
- 2.2 The site is an irregular rectangular shaped area measuring approximately 0.1ha and is relatively flat in topography. Paynes Boatyard is located in the north-eastern corner fronting the water. The area of site proposed for development as part of this application currently serves as boatyard storage which is gravel surface. The current access is via the southern corner which leads to the boatyard. There is some existing mature landscaping along Thornham Lane which provides some screening.
- 2.3 To the south of the application site is Thornham Marina.

## **3.0 The Proposal**

- 3.1 Planning permission is sought for the construction of a tied dwelling to serve Paynes Boatyard, including change use of land from commercial to residential.
- 3.2 The dwelling sought is a two-storey structure, the residential accommodation however, is proposed entirely at first floor level to incorporate the necessary flood risk mitigation, and storage for the boatyard is proposed under the dwelling at ground floor.
- 3.3 The existing boundary treatments are proposed to be retained to provide screening. The land within the red line would become residential land associated with the dwelling.

## **4.0 History**

95/01519/FUL	REF	Boatyard jetty extension, construction as existing jetty.
13/01463/FUL	PER	Erect shower and toilet facility. Refurbish shed.
13/03377/DOC	DOCDEC	Discharge of Condition No. 3 from permission SB/13/01463/FUL.
14/00241/FUL	PER	Construct new pontoons and scrap old ones.
21/01060/OUT	WDN	Outline application (with all matters reserved) 1 no. dwelling.
22/01140/PRESSP	PRE	Proposed tied dwelling serving Paynes Boatyard.

## 5.0 Constraints

Listed Building	NO
Conservation Area	NO
Rural Area	YES
AONB	YES
Strategic Gap	NO
Tree Preservation Order	NO
EA Flood Zone	
- Flood Zone 2	YES
- Flood Zone 3	YES

## 6.0 Representations and Consultations

### 6.1 Parish Council

Further Parish Council comments (13.02.2023)

The Southbourne Parish Council Planning Committee has reviewed this application and has agreed to support the application providing that the dwelling and the business be linked to each other and one cannot be sold independently of the other.

Original Comments

Members of the Southbourne Parish Council Planning Committee have considered this application and wish to make the following comment:

Members have noted that CHC has not yet formally consulted on this application and, as such, has not had time to respond. Members felt that they could not support this application until comments had been received from CHC. Members did wish to note that they were pleased to see that the applicants would be living in the proposed dwelling and that the business would be tied to the dwelling and one could not be sold independently of the other. Members were also pleased to see that the dwelling would be raised to mitigate flooding risks.

Members agreed to object to the application until comments had been received by CHC and ask that the planning officer allows an extension of time for comments to be received in order for the planning committee to reconsider this application.

### 6.2 Chichester Harbour Conservancy

Objection: insufficient commercial information to justify impact to the AONB landscape within an overall detailed business plan for the boatyard, to justify an exception to policies 2, (the final part of) 26, 43 and 45 of the local plan and Policies 1, 4 and 7 of the 'made' Southbourne Neighbourhood Plan, having regard to The Conservancy's Planning Principles 1-2, 4 & 9.

However, if Chichester District Council, were advised by its Economic Development Service, concludes that the submitted business case does justify an exception to Policy 45 of the Local Plan, The Conservancy will withdraw its objection, subject to

(a) Occupation of the dwelling being tied to the business, where persons living at the site are directly employed by Paynes Boatyard/the site identified with red/blue lines for 22/03137/FUL, through a planning obligation (not a planning condition), that mitigation for recreational disturbance is secured and that mitigation for nutrient loading is also secured; and,

(b) Suitable planning conditions are imposed to approve samples of external facing/roofing materials; soft planting design to be approved and implemented/maintained, to include the planting of at least 5 new native species trees to heavy nursery standard, that existing trees and hedgerow planting are safeguarded during construction, that automatic blinds be fitted to the proposed rooflight window/maintained and that the ridge height of the new dwelling be no higher than indicated on the submitted drawings.

The Harbour Conservancy prepared a report for their planning committee meeting. The full report is available to view on Public Access. Their conclusion (section 5.0) to this report is as follows:

'Whilst being sympathetic to the business and wishing to see it survive, the need to live at the site has not been properly set out to justify a departure from the development plan policies, which seek to secure sustainable development under the NPPF. Adding the dwelling could, in the short term at least, contribute to the successful development of the business as per the outlined plans. Over the longer term, The Conservancy would need to take a view on how effectively the building could be tied to the business or by supporting the application it may have effectively contributed to the end of the yard.

Boat storage space is in short supply and to lose any of the space available to store boats would in itself be likely to have a significant negative impact of the business. Maximising space available for storage would be most important for the business and putting a residential dwelling on the site – even with part of its undercroft still used for small boat storage - will reduce the available space for boat storage. It is not understood how building a dwelling on the site frees up £200,000 for investment in the business and its facilities. If this is indeed the case then perhaps it is an important consideration and ensuring this level of investment was then made in the boatyard would be very difficult to secure, even under an enforceable planning obligation.

It is feared that allowing the dwelling could in fact reduce the long term likelihood of the survival of the business. The residential dwelling immediately makes the site more attractive if put on the market and there would be nothing to prevent a buyer from purchasing the complete site in the future, living in the property, closing the business and having a nice house with water frontage, if the Council had no appetite to enforce the planning obligation of tied accommodation, or found it difficult to displace the applicant from the dwelling if the business were to fail.

There really needs to be exceptional circumstances for the Conservancy to support proposals to change the use of any part of a marine enterprise site to residential. In this regard The Conservancy's Planning Principle 02's wording seeks to safeguard marine enterprises. Policy 37 of the local plan and part of The Conservancy's Planning Principle 04 do allow for a rural workers dwelling outside of a defined settlement boundary, where a strong case can be made for an exception to Policies 2 and 45. The experience at Coombes Boatyard illustrates how difficult it became to retain some form of marine

enterprise at the site. after that yard closed, permission was granted for two houses and a large boatshed so as to continue some form of boat storage on site. In practice the boatshed was just brought by one of the house purchasers, leaving no boatyard facility on the site at all.'

### 6.3 Environment Agency

We request that the following condition be attached to any planning permission granted. The proposed development will only meet the National Planning Policy Framework's requirements in relation to flood risk if the following planning condition is included.

#### **Condition**

The development shall be carried out in accordance with the submitted flood risk assessment and the following mitigation measures it details:

- Finished floor levels shall be set no lower than 5.57 metres above Ordnance Datum (AOD)

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

#### **Reason**

To reduce the risk of flooding to the proposed development and future occupant.

### 6.4 Natural England (Summarised)

Further comment (23 May 2023)

Natural England has previously commented on this proposal and made comments to the authority in our response dated 16 January 2023 Reference number 417839 (attached for reference).

The advice provided in our previous response applies equally to this amendment. The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal. For clarity, we acknowledge the change in location of mitigation land and continue to advise No Objection Subject to Mitigation, and to agree with your HRA conclusion of No Adverse Effect on Integrity.

Should the proposal be amended in a way which significantly affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again. Before sending us the amended consultation, please assess whether the changes proposed will materially affect any of the advice we have previously offered. If they are unlikely to do so, please do not re-consult us.

Original comments 16 January 2023:

'SUMMARY OF NATURAL ENGLAND'S ADVICE. NO OBJECTION - SUBJECT TO APPROPRIATE MITIGATION BEING SECURED'

The mitigation strategy was subsequently amended during the course of the application.

#### 6.5 WSCC Local Highway Authority (summarised)

In summary, the LHA does not consider that this proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 111), and that there are no transport grounds to resist the proposal.

Conditions recommended.

#### 6.6 CDC Economic Development Service (EDS)

Further comment (31.03.2023)

In light of additional financial and commercial information provided by the applicant, we can provide some additional comments.

The EDS supports marine/tourism facilities, especially on existing sites. Any introduction of non-commercial use in this location needs careful consideration. It would be very disappointing if the boat yard was forced to close.

It is clear the business needs further levels of investment in order to create more sustainable forms or revenue. We can appreciate and can accept the business case to provide essential worker accommodation on site to service the customers who are using the site during unsociable hours. This would provide greater levels of customers service and efficiency for the business to have staff on site.

However, the scale and design of the proposed building we feel goes beyond essential worker accommodation. The dwelling would potentially become the biggest asset of the business. This could result in the business of the actual boatyard to be ancillary to the dwelling that is on site.

22.02.2023

The EDS supports marine/tourism facilities, especially on existing sites. Any introduction of non-commercial use in this location needs careful consideration. It would be very disappointing if the boat yard was forced to close.

It is clear the business needs further levels of investment in order to create more sustainable forms or revenue. We are not clear why some of these investments can't be made now, such as the drying berths, boat shelters for refit, Interior renovation of members area, purchase of new tools and equipment to enable extension of services. We are not clear why building a tied dwelling at significant expense is needed to enable this investment.

It is understandable that the business needs to employ more staff and night security for customer service needs outside the normal trading hours. The boatyard is open 0800 to 1800, 7 days per week, 365 days/year. These opening times are in line with other commercial operations, especially customer facing businesses such as hospitality or tourism. If customer service and security is required outside these times, then night-time security staff with appropriate training could be employed.

The design and access statement submitted with the application describes the proposed tied dwelling as "affordable on-site accommodation for the applicants and their family". We would argue that is a dwelling of considerable scale, high build quality and more towards the luxury end of the market. Its construction would require significant levels of investment. It does not appear to be in line with Policy 45 of local Plan where such a development is "...essential, small scale and local need which cannot be met within or immediately adjacent to existing settlements."

Furthermore, we are unclear from the proposed designs where the additional two full time employee essential staff, outside of immediate family members, are to reside.

From the information that has been provided, the EDS is not in a position to support this application.

#### 6.7 CDC Environmental Protection - Noise

It is noted that the proposed dwelling is to be tied to the operation of the boatyard therefore a noise assessment is not considered necessary.

#### 6.8 CDC Environmental Protection - Land contamination

Land contamination

The site has been in use as a boatyard for many years and there is considered to be potential for land contamination in the area. A phased risk assessment should be undertaken to ensure there are no ground conditions that could affect the future occupants or the structure of the building. It is recommended that conditions PC20, PC21, PC22 and PO14 are applied (note the conditions are sequential so that if no evidence of land contamination is encountered there would be no need for remediation or verification to take place).

#### 6.9 CDC Environmental Protection - Air quality

The site does not lie within an air quality management area and it is located some distance from major roads. It is not considered likely that there are significant sources of air pollution in the vicinity therefore an air quality assessment is not considered necessary.

Construction

During construction works, measures to minimise noise, dust, waste and other environmental impacts should be taken to reduce the impact of the development at neighbouring sites.

## 6.10 CDC Environmental Strategy

### CEMP

Due to the location of the site to Chichester and Langstone Harbour (SPA) and the potential impacts on this site and protected species within it, details on how this site will be protected and managed during the construction phase and post construction will need to be included within the Construction Environmental Management Plan (CEMP). This will need to be submitted as part of this application prior to determination.

### Nutrient Neutrality

Following submission of the Nutrient Neutrality and Mitigation the proposal will cause an increase in nitrogen of 1.67 kg/N/yr. Due to this increase we require that mitigation is undertaken. As detailed within the Nutrient Neutrality Report it has proposed that mitigation will be in the form of 0.06ha of farmland to woodland. As detailed within the mitigation report we require that the precise area within the is provided we can ensure no overlap between multiple mitigation sites. Once this has been confirmed this mitigation should be secured within the S106 agreement in perpetuity for 85 years.

### Recreational Disturbance

For this application we are satisfied that the HRA issue of recreational disturbance can be Resolved, as long as the applicant is willing to provide a contribution to the Bird Aware scheme, the standard HRA Screening Matrix and Appropriate Assessment Statement template can be used.

### Bats

The lighting scheme for the site will need to take into consideration the presence of bats in the local area and the scheme should minimise potential impacts to any bats using the trees, hedgerows and buildings by avoiding unnecessary artificial light spill through the use of directional light sources and shielding.

We require that a bat box is installed on the buildings onsite facing south/south westerly positioned 3-5m above ground.

### Nesting Birds

Due to the risk of disturbance to overwintering birds, construction works must avoid the winter months (October Feb) to ensure they are not disturbed by any increase in noise and dust. Due to requirement to avoid the winter months because of the over wintering birds, there may be a need to undertake vegetation clearance during the bird nesting season (1st March - 1st October). If works are required during this time an ecologist will need to check to ensure there are no nesting birds present on the site before any works take place (max 24 hours prior to any works commencing). We would like a bird box to be installed on the building / and or tree within the garden of the property.

### Hedgehogs

Any brush piles, compost and debris piles on site could provide shelter areas and hibernation potential for hedgehogs. These piles must be removed outside of the

hibernation period mid-October to mid-March inclusive. The piles must undergo soft demolition. A hedgehog nesting box should be installed within the site to provide future nesting areas for hedgehogs.

#### 6.11 CDC Drainage

Flood Risk: The site is wholly within tidal flood zone 3 (high risk). As per the NPPF, we should be diverting development to areas at lowest risk of flooding, therefore you will need to be satisfied that the sequential test is passed.

We have also reviewed the Environment Agency's response, and if you are minded to approve the application we would support the recommended condition with respect to minimum FFLs.

Surface Water Drainage: The application form states that surface water is to be disposed of via infiltration, this approach is acceptable in principle. Wherever possible, driveways, parking spaces, paths and patios should be of permeable construction. Due to the scale of the proposed development, we have no conditions to request. Surface water drainage should be designed and constructed to meet building regulations.

#### 6.12 Third party support comments

9 no. third party representations of support have been received concerning the following matters:

- a) Benefit to the public amenity of the area
- b) Respects, Enhances and Preserves the Historic Character of the Harbour
- c) Enhances the local economy within the Harbour
- d) Respectful to the Natural Environment of the Harbour
- e) Preservation of a Local Business
- f) Community
- g) Regeneration of a brown field site

#### 6.13 Applicant/Agent's Supporting Information

The applicant has provided a business plan during the course of this application. They have requested that this document is not made publicly available as it contains commercially sensitive information.. Officers have fully assessed the report containing the commercially sensitive information, and it has been taken into account in arriving at the recommendation to refuse the application.

### **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 Southbourne Neighbourhood Plan was made on the 15<sup>th</sup> December 2015 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 4: Housing Provision  
Policy 6: Neighbourhood Development Plans  
Policy 8: Transport and Accessibility  
Policy 26: Existing Employment Sites  
Policy 33: New Residential Development  
Policy 37: Accommodation for Agricultural and other Rural Workers  
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 48: Natural Environment  
Policy 49: Biodiversity  
Policy 50: Development and Disturbance of Birds in Chichester and Langstone Harbours Special Protection Areas

Southbourne Neighbourhood Plan

Policy 1: Spatial Strategy  
Policy 4: Housing Design  
Policy 5: Employment  
Policy 7: Environment

National Policy and Guidance

7.3 Government planning policy now comprises the revised National Planning Policy Framework (NPPF 2021), which took effect from 20<sup>th</sup> 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.*

7.4 Consideration should be given to Sections 1 (Introduction), 2 (Achieving Sustainable Development), Section 4 (Decision making), 5 (Delivering a sufficient Supply of Homes), Section 9 (Promoting sustainable transport), 12 (Achieving Well-Designed Places), 14

(Meeting the Challenge of Climate Change, Flooding, and Coastal Change) and 15 (Conserving and Enhancing the Natural Environments) of the NPPF. In addition, the relevant paragraphs of the National Planning Practice Guidance have also been considered.

#### Chichester Local Plan 2021 - 2039: Proposed Submission (Regulation 19)

- 7.5 Work on the review of the adopted Local Plan to consider the development needs of the Chichester Plan Area through to 2039 is now well advanced. Consultation on a Preferred Approach Local Plan has taken place. Following detailed consideration of all responses to the consultation, the Council has published a Submission Local Plan under Regulation 19, which was approved by Cabinet and Full Council for consultation in January 2023. A period of consultation took place from 3rd February to 17th March 2023, and the Submission Local Plan is expected to be submitted to the Secretary of State for independent examination in Summer 2023. In accordance with the Local Development Scheme, it is anticipated that the new Plan will be adopted by the Council in 2024. At this stage, the Local Plan Review is an important material consideration in the determination of planning applications, the weight that can be attached to the policies contained therein is dependent on the significance of unresolved objection attributed to any relevant policy, commensurate with government policy at paragraph 48 of the NPPF (2021).
- 7.6 Relevant policies from the published Chichester Local Plan 2021 - 2039: Proposed Submission (Regulation 19) are:
- Policy S1 Spatial Development Strategy
  - Policy S2 Settlement Hierarchy
  - Policy NE2 Natural Landscape
  - Policy NE5 Biodiversity and Biodiversity Net Gain
  - Policy NE6 Chichester's Internationally and Nationally Designated Habitats
  - Policy NE7 Development and Disturbance of Birds in Chichester and Langstone Harbours, Pagham Harbour, Solent and Dorset Coast Special Protection Areas and Medmerry Compensatory Habitat
  - Policy NE8 Trees, Hedgerows and Woodlands
  - Policy NE10 Development in the Countryside
  - Policy NE15 Flood Risk and Water Management
  - Policy NE16 Water Management and Water Quality
  - Policy NE19 Nutrient Neutrality
  - Policy NE21 Lighting
  - Policy H1 Meeting Housing Needs
  - Policy H3 Non-Strategic Parish Housing Requirements 2021-2039
  - Policy P2 Local Character and Distinctiveness
  - Policy P3 Density
  - Policy P4 Layout and Access
  - Policy P5 Spaces and Landscaping
  - Policy P6 Amenity
  - Policy T1 Transport Infrastructure
  - Policy T2 Transport and Development
  - Policy T3 Active Travel and Walking Provision
  - Policy A13 Southbourne Broad Location for Development

## Southbourne Parish Neighbourhood Plan Review 2019-2037 (Regulation 16)

7.7 Southbourne Parish Council undertook a review of the 'made' neighbourhood plan and an examination of the Southbourne Parish Neighbourhood Plan Review 2019-2037 was undertaken including a hearing held on 14 January 2022. The Examiner's report was published recommending the proposal for the plan was refused and did not proceed to referendum. At its meeting held on 12 April 2022, Southbourne Parish Council agreed to withdraw the plan as indicated above. However, the Parish Council has subsequently prepared the draft Southbourne Parish Neighbourhood Plan Pre-Submission Modified Plan 2014-2029; this plan completed the regulation 14 (Parish Council) consultation on 16 December 2022. The draft modified plan has now reached the next stage and been accepted by Chichester District Council for publication and Regulation 16 consultation which ended on Friday 14 April. At this stage, the Neighbourhood Plan Review is a material consideration in the determination of planning applications, the weight that can be attached to the policies contained therein is dependent on the significance of unresolved objection attributed to any relevant policy, commensurate with government policy at paragraph 48 of the NPPF (2021).

7.8 Relevant policies from the published Southbourne Parish Neighbourhood Plan Pre-Submission Modified Plan 2014-2029 are:

- Policy SB1: Development Within and Outside the Settlement Boundaries
- Policy SB3: Local Housing Needs
- Policy SB4: Design in Southbourne Parish
- Policy SB13: Green and Blue Infrastructure Network
- Policy SB14: Biodiversity
- Policy SB15: Trees Woodland and Hedgerows
- Policy SB17: Achieving Dark Skies
- Policy SB18: International Nature Sites
- Policy SB20: Water Infrastructure and Flood Risk
- Policy SB21: Sustainable Travel

### Other Local Policy and Guidance

7.9 Consideration has also been given to:

- Planning Obligations and Affordable Housing SPD
- Surface Water and Foul Drainage SPD
- CDC Waste Storage and Collection Guidance
- CHC Chichester Harbour AONB Management Plan (2014-2029)

7.10 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 workplace 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
- Promoting and developing a dementia friendly district

- Encourage and support people who live and work in the district and to adopt healthy and active lifestyles
- Coordinate and promote services that help those living with low level mental health conditions
- Protect and support the most vulnerable in society including the elderly, young, carers, families in crisis and the socially isolated
- Increase the number of volunteers and trustees in the community/voluntary sector
- Maintain the low levels of crime in the district in the light of reducing resources
- Support and empower communities and people to help themselves and develop resilience
- Support communities to meet their own housing needs
- Encourage partner organisation to work together to deliver rural projects and ensure that our communities are not isolated
- Support and promote initiatives that encourage alternative forms of transport and encourage the use of online services
- Promote and increase sustainable, environmentally friendly initiatives in the district
- 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
- ii. Design and impact upon character of the surrounding area
- iii. Impact upon amenity of neighbouring properties and future occupiers
- iv. Flood Risk
- v. Impact upon highway safety and parking
- vi. Nitrogen Neutrality
- vii. Ecological considerations
- viii. Infrastructure
- ix. Recreational Disturbance
- x. Other Matters

### Assessment

i. Principle of development

8.2 The application site is located within the Parish of Southbourne, outside of the defined settlement boundary within the designated countryside. Local Plan Policy 45 advises development will be supported, outside of settlement boundaries, where it requires a countryside location and meets an essential, small scale and local need which cannot be met within or immediately adjacent to existing settlements (Policy 45 of the Local Plan). Policy 1 of the Southbourne Neighbourhood Plan states that it will support development proposals located inside the Settlement Boundaries.

8.3 Policy 37 of the Local Plan provides five-point criteria for accommodation for rural workers and supports proposals which are necessary to meet the accommodation needs of full-time workers in agriculture, forestry or other businesses requiring a countryside location providing they meet the five criteria contained in the policy. The policy pre-text at paragraph 17.38 provides that the evidence required for new occupational dwellings is

outlined in Appendix E in the adopted Local Plan. Paragraph E9 of Appendix E Appropriate Marketing Guidance requires that supporting information for new occupational dwellings to support existing agricultural activities on well-established agricultural units must demonstrate that there is a clearly established existing functional need and the unit and agricultural activity concerned have been established for more than 3 years, are currently financially sound and have a clear prospect of remaining so.

- 8.4 The National Planning Policy Framework (NPPF) sets out at paragraph 80(a) that development of isolated homes in the countryside should be avoided unless there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside. Planning Practice Guidance "Housing Needs of Different Groups" details at paragraph 010 that considerations that may be relevant to take into account when applying the NPPF paragraph include evidence of the necessity for a rural worker to live at, or in close proximity to their place of work to ensure the effective operation of an agricultural, forestry or similar land-based rural enterprise (for instance, where farm animals or agricultural processes require on-site attention 24 hours a day and where otherwise there would be a risk to human or animal health from crime, or to deal quickly with emergencies that could cause serious loss of crops or products) and whether the provision of an additional dwelling on site is essential for the continued viability of a farming business through the farm succession process.
- 8.5 As the proposal relates to a marine-related business, it would therefore not be considered to fall within the remit of Policy 37 of the Local Plan, NPPF paragraph 80(a) or the Planning Practice Guidance all referred to above, and which clearly provide a necessity that the occupational dwelling sought for a worker of a rural business relates to agriculture, forestry, or similar land-based activities. As such, the primary policies for considering the proposal would be Policy 45 Development in the Countryside and Policy 43 Chichester Harbour Area of Outstanding Natural Beauty (AONB) along with the Joint Chichester Harbour Area of Outstanding Natural Beauty SPD.
- 8.6 Policy 44 of the Local Plan relates to Development around the Coast. This policy makes no provision for the development of new housing around the coast. Whilst the development would need to accord with the criteria of Policy 44, compliance with this policy would not overcome the fundamental conflicts with Policies 2 and 45 of the Local Plan and guidance set out within the NPPF which seeks to locate new residential development in sustainable locations.
- 8.7 No evidence has been presented to sufficiently demonstrate that there is an essential need for a dwelling in this location. There is no business need which requires accommodation on-site and the business has operated successfully up to now without the need for on-site accommodation. The intention is to use the income from the sale of the existing dwelling of the applicant to fund the replacement dwelling and to ensure viability of the business. There would be no way to ensure that this funding was used in this way and as such, officers do not consider that this would overcome the fundamental issues with the principle of the development.
- 8.8 It is appreciated a relocation will be necessary for the applicant and their family, to take an active role in the business; however, this could be achieved through a relocation to a nearby town, within a short commuting distance. This is the current arrangement for the owner and sole employee. Whilst the intentions to invest are admirable, there is no

guarantee there will be available funds to invest, post the construction of the dwelling, nor could this be secured/required at the planning stage and therefore provides no certainty of future funding coming forward for improvements to the boatyard as previously discussed. The LPA appreciates that the business requires substantial hours of work to maintain and operate the business and that this can include working long and unsociable hours, however, this on its own does not indicate an essential need to have their home on the site itself, rather than in the vicinity and travelling to the site each day. The applicant has provided details of the work required to operate the business and the LPA understand that the business is intensive, however, this information does not demonstrate an essential need for overnight accommodation on the site.

- 8.9 Furthermore, the design and access statement submitted with the application describes the proposed tied dwelling as "affordable on-site accommodation for the applicants and their family". The LPA consider that the proposal is a dwelling of considerable scale, high build quality and more towards the luxury end of the market. Its construction would require significant levels of investment. It does not appear to be in line with Policy 45 of local Plan where such a development is "...essential, small scale and local need which cannot be met within or immediately adjacent to existing settlements." This concern is echoed by the Economic Development Service who are unable to support the proposal. They consider that alternative revenue streams should be explored prior to a new dwelling and there are concerns about the loss of part of the business and the size and scale of the dwelling.
- 8.10 In conclusion, the application has been assessed under policy 45 of the Local Plan and this proposal does not meet the definition of requiring a countryside location or being an essential, small scale and local need. As such, the principle of development is unacceptable, and the application cannot therefore be supported.
- 8.11 The Council is currently unable to demonstrate a 5-year housing land supply. Paragraph 11 d) of the Framework is therefore engaged which states that planning permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed and as set out in Footnote 7 to the paragraph, or, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Until the Council has a 5-year housing land supply, in order to manage housing delivery, it has produced an Interim Policy Statement (IPS) setting out the proactive measures that the Council is taking to increase the supply of housing, and to encourage appropriate housing schemes. The proposed development does not meet the criteria of the IPS, the first criteria of which is that housing should be delivered adjoining existing settlement boundaries. Whilst the proposal would make a modest contribution to the districts housing delivery, this would not outweigh the fundamental conflicts with planning policy and the IPS.

#### Recent Appeal Decisions

- 8.12 The LPA has received two appeal decisions recently which both relate to the proposed development of new dwellings in the countryside.
- 8.13 A recent appeal decision in Sidlesham (APP/L3815/W/22/3307155) highlights the Inspector's position on new dwellings in the countryside and the application of 'essential' need. In this Appeal decision, the Inspector considered the monthly calendar of tasks and daily tasks and understood that the business was labour intensive. However, the

information did not demonstrate an essential need for overnight accommodation and would therefore not give justification for the construction of a new dwelling. Officers therefore maintain the view that intensive working hours and labour does not constitute an essential need for a dwelling contrary to the development plan.

- 8.14 Appeal decision APP/L3815/W/22/3303937 relates to the proposed construction of a detached dwelling in the countryside outside of the settlement boundary. In this application, there was no essential need and the dwelling being sought was not for agricultural workers accommodation. The proposed dwelling was found by the Inspector to not fall within any of the exceptions to the restrictions pertaining to development in such locations set out by the Local Plan (Policies 2 and 45). The Inspector found that the proposed development would be in clear conflict with the development strategy for the District as established in Policy 2 of the Local Plan. There were no matters which outweighed the conflicts with the development plan and the Appeal was dismissed.

#### The Business Plan/Loss of Employment Land

- 8.15 It is established that the development would not accord with Policy 45 and therefore the principle of development is not acceptable. Officers have had regard to the business plan presented as part of this application. The business plan does not demonstrate an essential need for a dwelling to be built on the application site and this consideration would not outweigh the fundamental concerns with the principle of development.
- 8.16 The Business Review is heavily weighted in support of the dwelling as being essential for the operations of the business, despite one not being required previously. It appears to place limited weight on the employment of additional staff, on what appears to be financial reasoning; however, this appears to conflict with the applicant's desire to construct a three-bedroom dwellinghouse. It is understood that funds are to be freed up due to the sale of an existing property, however, there is no mechanism by which the Council can require funds to be invested within the business. If the business is currently unable to afford to employ an additional staff member, then officers question how a dwelling on-site would rectify this issue and whether the significant investment of funds to build the proposed dwelling would be the most appropriate course of action. This was also raised at the pre-application advice stage. The dwelling would potentially become the biggest asset of the business. This could result in the business of the actual boatyard to be ancillary to the dwelling that is on site. The proposed development would also result in the loss of boat storage space, which as Members have been advised by the Harbour Conservancy, is in short supply. The loss of any boat storage space would be likely to have a significant detrimental impact on the business enterprise and would be contrary to CLP Policy 26 and paragraph 84 of the NPPF.
- 8.17 The cost comparison at paragraph 3.2 of the Business Plan identifies that Paynes Boatyard offers a service at a significantly reduced cost than competitors. The average cost of storage (8m boat on hardstanding/storage ashore) amongst the yards/marinas surveyed is £1,751 per year. The cost at Paynes is £720 per year - almost 60% lower than average, and nearly 35% lower than the next cheapest alternative (Sophie's Boatyard). Officers would therefore raise concerns that the retention of lower fees to attract custom, appears to hinder the investment into the business which is required. Commentary provided identifies why the costs are lower than competitors however, this would not provide sufficient justification for the proposed dwelling. Section 3.3 of the business plan identifies; 'In line with the low-cost operating model, and whilst recognising differences of

size and scale, staffing at Paynes is currently at a level significantly below other boatyards and marinas in Chichester Harbour'. Officers would question whether an increase in fees could provide the funds to employ additional staff, which would negate the need for a new dwelling in an unacceptable location.

8.18 Additionally, the applicant does not currently live in the district and does not have an active involvement in the business and the business has survived for many years without on-site accommodation. Officers therefore raise concerns that the business plan is somewhat speculative and whilst the applicant is well-intentioned, this does not garner sufficient justification to permit this development, which is contrary to planning policy. The nearest Settlement Boundary, Southbourne, can be reached by car within 5 minutes and officers consider that this is not an unreasonable distance to travel to the business. The EDS has also commented that the opening times are in line with other commercial operations, especially customer facing businesses such as hospitality or tourism. If customer service and security is required outside these times, then night-time security staff with appropriate training could be employed. It is therefore concluded that there is no essential business need for a dwelling to be provided on-site and alternative accommodation within the settlement boundary/local area could be sought.

ii. Design and impact upon character of the surrounding area

8.19 Policy 33 of the LP refers to new residential development and sets out that proposals must meet the highest standards of design and a high-quality living environment in keeping with the character to the surrounding area and its setting in the landscape; in addition, that its scale, form, massing and siting, height and design respects and enhances the character of the surrounding area and site.

8.20 The application site is located within the AONB. The Countryside and Rights of Way Act 2000 (CROW Act) requires the LPA to have regard to the purpose of conserving and enhancing the natural beauty of Areas of Outstanding Natural Beauty. Paragraph 176 of the NPPF sets out that "Great weight should be given to conserving and enhancing scenic beauty in...Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues". Policy 43 of the CLP reiterates the importance reinforcing and responding to the distinctive character of the AONB., Policy 44 further emphasises the importance that development around the coast must not adversely affect the character and environment of the AONB.

8.21 Policy 45 sets out that proposals requiring a countryside location should ensure that their scale, siting, design and materials would have a limited impact on the landscape and rural character of the area.

8.22 The application is accompanied by a landscape and visual impact assessment which concludes that the development would have a low/low-medium visual impact on the wider area. Officers do appreciate that efforts have been made to reduce the visual impact of the dwelling on the wider area. Design details such as muted materials, eaves overhang and low reflective glazing would all reduce the wider visual impact. Notwithstanding this, the presence of the proposed 2 storey structure would have an impact upon the AONB, which could be avoided.

iii. Impact upon amenity of neighbouring properties and future occupiers

8.23 The NPPF states in paragraph 130 that planning should ensure a good quality of amenity for all existing and future occupiers of land and buildings, and Policy 33 of the CLP include requirements to protect the amenities of neighbouring properties.

8.24 The proposal would be sufficiently distanced, orientated and designed so as not to have an unacceptable effect on the amenities of the neighbouring properties, in particular to their outlook, privacy or available light.

iv. Flood Risk

8.25 The application site is located within Flood Zone 3. The NPPF paragraph 159 states that Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. Policy 42 of the CLP further emphasises that inappropriate development in areas at risk of flooding will be avoided and redirected away from the areas of highest risk. Development in areas at the highest risk of flooding would need to meet the sequential and exception tests.

8.26 As established in the principle of development assessment of this proposal, the LPA does not consider that development of a dwelling in this location is necessary and therefore the principle of this development within Flood Zone 3 is not acceptable and would not pass the sequential test. It is the role of the Local Planning Authority (LPA) to assess this risk. Whilst the Environment Agency (EA) does not object, this is because the EA will only comment on flood risk measures which are proposed and not the principle of a dwelling in this location. The CDC drainage team have also requested that the sequential test is considered. To pass the sequential test the LPA must be satisfied that the new dwelling could not be provided elsewhere in an area at lower risk of flooding. The provision of one single dwelling could be provided within an area at less risk of flooding and therefore, despite the measures put in place to mitigate flood risk, the development would be unacceptable in terms of flood risk.

8.27 The proposal would therefore be contrary to the NPPF and Policy 42 of the CLP.

v. Impact upon highway safety and parking

8.28 Policy 39 of the Chichester Local Plan seeks to ensure that new developments do not result in residual cumulative impacts which are severe and ensure a safe and adequate means of access for all modes of transport.

8.29 The WSCC Highway Authority has been consulted and no objection has been raised. Conditions have been suggested and these could be included if the recommendation was to approve the development. Three car parking spaces have been demonstrated, in accordance with the WSCC Car Parking Demand Calculator. From inspection of the plans, the proposed parking spaces appears suitably sized and on-site turning appears achievable.

8.30 Therefore, the proposal would accord with Policies 8 and 39 of the CLP which seeks to ensure that new development has acceptable parking levels, and access and egress to the highway.

vi. Nitrogen Neutrality

8.31 The proposal comprises new development with overnight accommodation, with foul sewerage to be dealt with via a cess pit. As such, it is accepted that the wastewater from the development will eventually discharge into a European or internationally designated protected site, with the potential for harm to be caused to those sites by the overall increase in nitrate levels. It is Natural England's view that the cumulative increase in nitrate levels from development is likely to have a significant effect on such designated sites. This is therefore directly connected to the increase in wastewater from the development.

8.32 In such circumstances, the implications from the proposed development (that is the nutrient content of the discharge and the increase in recreational disturbance), together with the application of measures to avoid or reduce the likely harmful effects from the discharge, are required to first be screened through the initial Habitat Regulation Assessment (HRA) and then tested by the council via an Appropriate Assessment (AA) to assess the impact on the designated sites in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended). The completion of an AA is wholly reliant upon the applicant providing a nitrogen budget calculation, to demonstrate the level of nitrogen produced by the proposed development and a mitigation package/proposal (if required) to offset any increase in nitrogen.

8.33 The surplus of Nitrogen from the development is 1.67 kgTN/year for which mitigation is required. A land parcel off Droke Lane at East Dean, named East Field has been identified. The land is 4.78 ha in extent and was previously in arable production. To mitigate this proposal, an area of land of 0.06 hectares that has been taken out of agricultural production within the land described above, to make the scheme nitrate neutral. Natural England have deemed this approach to be acceptable in principle, subject to the mitigation being secured. The mitigation has not been secured as the application is considered to be unacceptable, however officers do acknowledge that it is likely that the issue of nitrate neutrality could be resolved successfully and secured via a suitably worded condition in the event that the development was permitted.

vii. Ecological Considerations

8.34 Due to the location of the site within the Chichester and Langstone Harbour (SPA) and the potential impacts on this site and protected species within it, details on how this site will be protected and managed during the construction phase and post construction will need to be included within the Construction Environmental Management Plan (CEMP).

8.35 Given the location of the site, there is potential that the development would result in some impacts upon protected species if sufficient mitigation was not provided. Ecological enhancements could be secured by condition if the application was to be permitted.

viii. Infrastructure

- 8.36 On 24th January 2023, The Council agreed the Pre-Submission Local Plan for Regulation 19 consultation, beginning 3 February 2023. Therefore, at the time of writing (Regulation 19) the Plan is at an advanced stage of preparation and its weight as a material consideration in the determination of planning applications has increased. The Chichester Local Plan Review (LPR) will require all new housing in the southern part of the Plan Area to contribute to a scheme of infrastructure improvements to the strategic road network (A27).
- 8.37 The LPR sets out a strategy to provide long term mitigation of these impacts, up to 2039, which requires all new housing development (net increase) to contribute towards identified improvements. In the absence of any such contribution the proposals would lead to an unsustainable increase in impacts upon these networks and would undermine the ability of the emerging LPR to deliver an appropriate mitigation strategy to see further growth of up to 3,600 dwellings beyond existing commitments. The proposal is therefore contrary to Policy 9 of the Chichester Local Plan 2014-2029, Policies I1, T1 and T2 of the emerging Chichester Local Plan Review 2021-2039: Proposed Submission and Paragraphs 8, 104, 105 and 110 of the National Planning Policy Framework

ix. Recreational Disturbance

- 8.38 The site is located within the 5.6km 'zone of influence' of the Chichester and Langstone Harbours Special Protection Area where it has been identified that the net increase in residential development results in significant harm to those areas of nature conservation due to increased recreational disturbance.
- 8.39 In such instances, the combined implications from the proposed development (that is the nutrient content of the discharge and the increase in recreational disturbance), together with the application of measures to avoid or reduce the likely harmful effects from the discharge and the contribution towards the recreational disturbance mitigation, are required to be tested by the Council via an AA to assess the impact on the designated sites in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended). Natural England must then be consulted on any such Appropriate Assessment.
- 8.40 It remains that adequate mitigation, in the form of a financial contribution has yet to be provided in accordance with Policy 50 of the Local Plan and the current April 22-23 developer contribution as set by the Bird Aware Partnership. It is acknowledged the financial mitigation has not been sought by the Council, due to the application being recommended for refusal. The applicants have confirmed they are agreeable to make the relevant financial contribution, which could be secured via a Unilateral Undertaking (legal agreement), should this application be permitted. The provision of the adequate financial payment would adequately address the corresponding reason for refusal.

x. Other Matters

- 8.41 Officers have noted the comments raised by third party contributors and note that there were a number of support comments submitted in response to the proposal. The reference to support of a long-established local business is not a material planning consideration

and the personal circumstances of the applicant cannot be considered and would not outweigh the assessment against planning policy.

### Conclusion

- 8.42 As set out above, Development Plan Policies and guidance within the NPPF seek to direct new residential development to sustainable locations. The application site is within a countryside location and insufficient justification has been provided by the applicant to demonstrate that there is a need for a rural-workers dwelling on the site. The proposals are therefore considered to represent an unsustainable form of development which conflicts with local and national planning policies.
- 8.43 The proposed development would result in a part change of use of the site from a marine enterprise to residential and would result in the loss of boat storage space. The Harbour Conservancy's Planning Principle 02 seeks to safeguard marine enterprises and the loss of vital land within the boatyard to a residential use would likely be detrimental to the future survival of the business, which would be contrary to Development Plan policies and the NPPF.
- 8.44 Furthermore, the application site is located within Flood Zone 3 and no sequential test has been undertaken. The proposed development does not therefore accord with the relevant flood risk policies.
- 8.45 Overall, the proposal is contrary to Development Plan Policies 2, 26, 42, 43 and 45 and Neighbourhood Plan Policies 1 and 4 and is recommended for refusal.

### Human Rights

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

### **RECOMMENDATION**

REFUSE for the following reasons:-

1) The site lies outside a designated Settlement Boundary and the proposal is consequently located in designated countryside, where the policies of the Development Plan state that development will only be permitted where it requires a countryside location and where it meets an essential, small scale and local need, which cannot be met within or immediately adjacent to the existing settlement. It has not been demonstrated that the proposed dwelling requires a countryside location, nor that it is required to meet an essential, small and local need. Therefore, the proposed development constitutes an unjustified form of development, located outside the settlement boundary that is in conflict with Policies 1, 2, 43, 45 and 48 of the Chichester Local Plan 2014-2029, Paragraph 80 and Sections 12 and 15 of the NPPF.

2) The proposal would result in the loss of a marine-based employment land which currently comprises boat storage. The dwelling would be sited on land which is currently in use as boat storage, for which there is a need within the district and insufficient evidence

has been provided to demonstrate the site is no longer required for this purpose. The proposal therefore fails to accord with Policy 26 and the marketing requirements set out within Appendix E of the Chichester Local Plan and paragraph 84 of the NPPF.

3) In the absence of a mechanism to secure the necessary nitrate mitigation, the proposals are contrary to Paragraphs 57 and 180 of the NPPF and Policies 49, 50, 51 and 52 of the Chichester Local Plan: Key Policies 2014-2029, and the Conservation of Habitats and Special Regulations (2017).

4) The site is located within the 5.6km 'zone of influence' of the Chichester and Langstone Harbours Special Protection Area where it has been identified that the net increase in residential development results in significant harm to those areas of nature conservation due to increased recreational disturbance. Sufficient mitigation against such an impact has not been made and, therefore, the proposal is contrary to Policy 50 of the Chichester Local Plan Key Policies 2014-2029. The development would therefore contravene the Conservation of Habitats and Species Regulations 2017 and the advice in the National Planning Policy Framework.

5) On the basis of the information provided, the proposals, in combination with other development, would further impact upon the Strategic Road Network (SRN). This cumulative effect would likely have an unacceptable impact on the safety and function of both the SRN and the Local Highway Network (LHN). The Chichester Local Plan Review (LPR) sets out a strategy to provide long term mitigation of these impacts, up to 2039, which requires all new housing development (net increase) to contribute towards identified improvements. In the absence of any such contribution, the proposals would lead to an unsustainable increase in impacts upon these networks and would undermine the ability of the emerging LPR to deliver an appropriate mitigation strategy to see further growth of up to 3,600 dwellings beyond existing commitments. The proposal is therefore contrary to Policy 9 of the Chichester Local Plan 2014-2029, Policies I1, T1 and T2 of the emerging Chichester Local Plan Review 2021-2039: Proposed Submission and Paragraphs 8, 104, 105 and 110 of the National Planning Policy Framework.

## Decided Plans

The application has been assessed and the decision is made on the basis of the following plans and documents submitted:

Details	Reference	Version	Date Received	Status

## INFORMATIVES

1) The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, it has not been possible to resolve them. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.

2) This decision relates to the following plans: 21117-00A, 21117-02C, 21117-05A, 21117-07A, 21117-03C

For further information on this application please contact Sascha Haigh on 01243 534734

To view the application use the following link - <https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=RMW4BRERH0600>