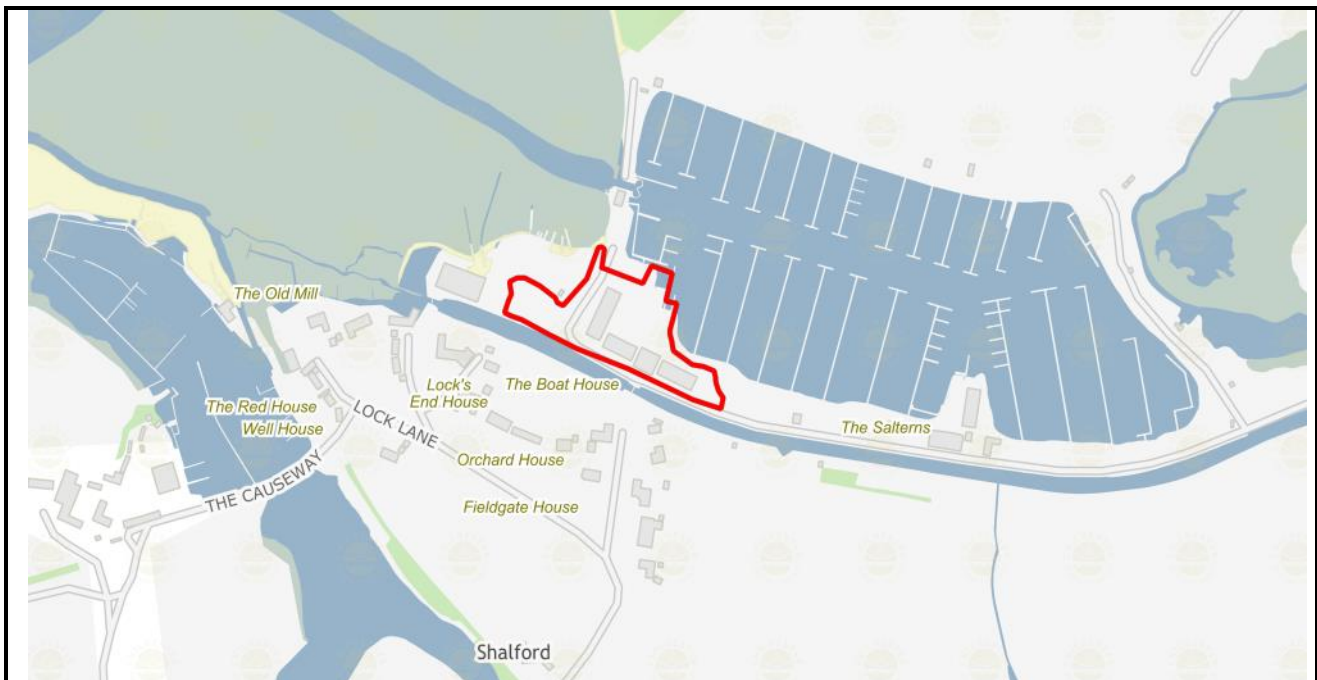



Parish: Birdham	Ward: The Witterings
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BI/22/03026/FUL

Proposal	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 - Variation of condition 3 from planning permission BI/12/00475/FUL (as amended by S.73 permission B1/22/01742/FUL) - Use Class variation of buildings A and D (Units A2 and D7 only) to allow greater flexibility., as amplified by email dated 22 May 2023.		
Site	Chichester Marina Birdham Chichester West Sussex PO20 7EJ		
Map Ref	(E) 482896 (N) 101105		
Applicant	C/O Agent	Agent	Andy Pearce

RECOMMENDATION TO DEFER FOR S106 THEN PERMIT



	NOT TO SCALE	Note: Do not scale from map. For information only. Reproduced from the Ordnance Survey Mapping with the permission of the controller of Her Majesty's Stationery Office, Crown Copyright. License No. 100018803
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1.0 Reason for Committee Referral

- 1.1 Parish Objection - Officer recommends Permit
- 1.2 Statutory Consultee Objection - Officer recommends permit
- 1.3 **Members may recall that this application was considered at the 8 November 2023 Planning Committee, where Members resolved to Defer for S106 then permit the application, requiring a Travel Plan and monitoring fee as an obligation and agreeing the officer suggested conditions and informatives. In addition Members also requested an additional condition as follows:**

Notwithstanding condition 4, upon each vacation of Unit A2 as shown on plan number 23-4100-111 Rev PL3 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) and/or Unit D7 (as shown on plan number 23-4100-112 Rev PL2 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) and commencement of marketing for rent or sale, the owner/landlord shall for the first 2 months of marketing, market the premises for marine related uses only, and thereafter for any of the permitted uses, unless otherwise agreed in writing by the Local Planning Authority. Evidence of marketing shall be maintained by the owner/landlord and records shall be kept up to date and available for inspection by the Local Planning Authority.

Reason: To safeguard 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.

- 1.4 **Following the Planning Committee, the applicant decided they did not want to enter into the obligation to provide the Travel Plan and monitoring fee and therefore requested that the proposed uses classes requiring the Travel Plan and monitoring fee were remove from the application (i.e. remove non-marine business falling within use classes E(c)(i),(ii) or (iii) or E(g)(i) or (ii) uses).**
- 1.5 **The application is therefore back before Members for consideration with an amended proposal, amended conditions and an amended officer recommendation to Permit subject to conditions and informatives.**

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 73 of the Town and Country Planning Act 1990, to amend condition 3 of planning permission 12/00475/FUL (as amended by S73 Permission 22/01742/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, 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.'
- 3.3 Condition 3 of that planning permission stated:
- 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. Class B1 was revoked and effectively replaced by Class E(g).
- 3.5 Planning permission was granted under S73 application on 11/11/2022 (reference: 22/01742/FUL) to amend section 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).

3.6 The current proposal seeks to further amend condition 3 to allow for units known on site as A2 and D7 to have a flexible use under the following classes of the Town and Country Planning (Use Classes) (England) Regulations 1987 (as amended). During the course of this application the use classes sought were refined as follows:

Unit A2: Use Classes

- E(a) Display or retail sale of goods, other than hot food (Marine related use and non-marine use)
- ~~E(c) (i) Financial services, E(c)(ii) Professional services (other than health or medical services), E(c)(iii) Other appropriate services in a commercial, business or service locality (Marine related use and non-marine use)~~
- ~~E(g) Uses which can be carried out in a residential area without detriment to its amenity: (i) Offices to carry out any operational or administrative functions (ii) Research and development of products or processes (iii) Industrial processes (Marine related use and non-marine use)~~
- B2 General industrial (Marine related use and non-marine use)
- B8 Storage or distribution (Marine related use and non-marine use)

Unit D7: Use Classes

- E(a) Display or retail sale of goods, other than hot food (Marine related use only)
- ~~E(c) (i) Financial services, E(c)(ii) Professional services (other than health or medical services), E(c)(iii) Other appropriate services in a commercial, business or service locality (Marine related use and non-marine use)~~
- ~~E(g) Uses which can be carried out in a residential area without detriment to its amenity: (i) Offices to carry out any operational or administrative functions, (ii) Research and development of products or processes, (iii) Industrial processes (Marine related use and non-marine use)~~
- B2 General industrial (Marine related use and non-marine use)
- B8 Storage or distribution (Marine related use and non-marine use)

3.7 It should be noted that the numbering of the units on the original planning application differ to the numbering on site. What is known as Unit A2 on site is shown as part of a wider Unit A2 on the approved plans for 12/00475/FUL. Building A as built has been subdivided in 6 units on site, whereas this is shown as 2 units on the approved plans. Unit A2 on plans approved under 12/00475/FUL has a ground floor area of 372sqm and mezzanine of 211 sqm (583sqm). Whereas Unit A2 as built has a total floor area of 156sqm as shown on plan number 23-4100-111 Rev PL3 (Drawing as-built) submitted on 15/03/2023.

3.8 What is known as Unit D7 on site is Unit D6 on the approved plans for 12/00475/FUL. Unit D7 (as built) is at first floor level and has a floor area of 376sqm and is shown on plan number 23-4100-112 Rev PL2 (Drawing as-built) submitted on 15/03/2023.

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, re-provision and
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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.
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, 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 - 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
22/01742/FUL	PER	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 (Variation of condition 3 from planning permission BI/12/00475/FUL - To allow building D to have a mixed use cafe/restaurant (use class Eb) to a maximum of 365 sqm.)

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

Further comments received 13/10/23

Birdham Parish Council maintains and reiterates its **STRONG OBJECTION** to this application. These units are positioned where they are to be of use to the boat owners. The units should be for marine trades only. Birdham's research has shown that the rent for these units is unrealistically high. The units could either be reduced in size or the rent reduced.

Original comments received 13/01/23

These units are positioned where they are to be of use to the boat owners. The units should be for marine trades only. Birdham's research has shown that the rent for these units is unrealistically high. The units could either be reduced in size or the rent reduced.

6.2 Apuldram Parish Council

No comments received.

6.3 Chichester Harbour Conservancy

The proposal is opposed on the following grounds:

- The loss, or potential loss, of marine based employment use of buildings located within this marina and countryside setting that are provided to primarily serve marine and coastal users to the site, this would be contrary to AONB PP01 (AONB as a protected area), and AONB PP02 (Safeguarding Marine Enterprise), as well as the Joint Chichester Harbour AONB SPD (Section 24: Marine Enterprise).
- This application contravenes the Joint Chichester Harbour AONB SPD, and AONB guidance which requires a clear demonstration that no harm is caused to the AONB. The proposed open flexibility in allowing non-marine based users, which do not require such key waterside location and could operate from any location elsewhere, reduces the availability of such waterside sites for business which are primarily focused towards marine activities.

Chichester Harbour Conservancy is keen to ensure that all appropriate and necessary planning considerations, on and off-site, are fully addressed to safeguard the quality of the AONB.

Many 'Planning Permitted Development' allowances do not apply within an AONB. 'Permitted Development' works may therefore require a planning application to be submitted to the Local Planning Authority for formal consideration.

The requirement under AONB PP02 for a marketing exercise before the consideration of any Change of Use is responded to by the applicant as being unnecessary as the flexibility in the wider usage band sought would allow proactive management of tenants without the need of an 18-month marketing.

However, the submitted statement indicates that Unit D7 has been marketed since 19 February 2019, and unit A2 since 20 April 2020. The marketing details provided with the submission indicates either marine based business users (such as kayak sales, marine wrapping/graphics, marine upholstery, water sport retail, etc.) who considered the rental asking price too expensive, or non-marine based users (a range including student accommodation, joinery business, car sales, fitness instruction, general office use, veterinary, etc.), who found the units unsatisfactory for various reasons (too large, too expensive, too remote, etc.).

It is noted that the site is one of 10 owned and operated by the applicant company. The applicants state that in none of the other sites are there planning restrictions to the level that operate at Chichester Marina. Of the 10 other sites, only one is referred to, Port Solent Marina, Portsmouth. It should be noted that this site does not lie in an AONB, is within a predominantly built-up residential and commercial area, with a significant number of residential flats and apartments up to three and four storey height around the water area. The commercial uses include retail, entertainment (cinema), and restaurants. The character and scale is not comparable to the current application site, and serves a different community profile, within a diametrically different environmental landscape.

Other Premier Marinas sites exist locally within the south-central coast at Gosport, Portsmouth; at Southsea, Portsmouth; at Swanwick, Southampton; and at Premier Universal, Southampton. All lie within urban built-up locations where there are a mix of residential, retail, and commercial activities on the site or in close location to the site. None have the characteristic of Chichester Marina which lies in the AONB countryside and relatively separate from any main or major urban centre. The operational requirements of the current site are therefore clearly different from other local sites operated by the applicant company.

AONB PP02: Safeguarding Marine Enterprise, requires that existing marine based employment sites are retained where possible. The applicant's case (see Para 18-1.9) above claims the Change of Use variation make the units more flexible without removing the marine based possibility of occupation in the future. Whilst this is technically correct, the availability of the units for marine related uses is more an economic consideration by prospective tenants. If a higher rental income is available to non-marine activities, then there is a clear economic advantage to 'price-out' traditional marine service uses even though this is a marine focused site, for more

financial lucrative non-marine occupiers. The removal, or as in the current submission, the wider flexibility of occupational user groups, would make this option of the removal of marine-related users more likely, to the detriment of the site and other site users, contrary to the aims and intention of AONB PP02.

Joint SPD Section 24: Marine Enterprise, reflects to approach of AONB PP02, in 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. Marine related or other appropriate commercial / employment uses should not be marginalised within the development so as to affect its viability in the long term. (Joint SPD page 40)

The Chichester Harbour Management Plan Policy 13: Prosperous Economy, states that "Chichester Harbour will continue to be a place where marine businesses prosper." This emphasises the importance of the marine based economy within the AONB protected national landscape and the unique nature of the Chichester Harbour AONB. Any diminution of the marine based employment activity within the AONB would therefore be strongly resisted. This is the underlying framework to AONB PP02 which supports this approach.

The character and atmosphere / ambiance of the AONB locality is unlikely to be substantially altered by this proposal. The use of the two units identified would continue to provide staff and visitor interaction on the site.

In matters of ecology, biodiversity, or wildlife habitat, hibernation, foraging, mating, or spawning / nesting / rearing areas, the development proposal in the AONB would be unlikely to have any identifiable harmful impact. The proposal is unlikely to have any significant impact or effect on the AONB in relation to wildlife conservation and protection. There are no mitigation measures necessary in relation to this proposal.

6.3a Environment Agency

There would be no change in vulnerability classification, therefore no further comments to make on this S73 application.

6.3b WSSC Local Lead Flood Authority

No comment to make as there are no significant impacts on surface water flood risk and drainage and I note the EA have been consulted in relation to this application.

6.4 WSSC Highways

The LHA consider there is no highway safety or capacity concerns associated with the current proposal; therefore, no objection is raised.

6.5 CDC Environmental Health Officer

Our department raises no objection to the proposed variation of Condition 3, namely the removal of the marine restriction for Units D7 and A2. It is considered that adequate safeguards will remain from an Environmental Health perspective, notably

Condition 4 (Illumination), Condition 8 (Storage of Fuels) and Condition 12 (External plant and machinery) (Ref: 22/01742/FUL).

6.6 CDC Planning Policy

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. PP02 further states that other commercial/employment uses may be acceptable provided that any proposed non-marine-related employment use retains easy access to the water and features of the building which allow boats to be easily taken into and out of the converted buildings. In addition, marine related uses are not to be marginalised within the redevelopment so as to affect their long-term viability. It should be noted that the Planning Inspector, on the appeal of refused planning application reference 21/00833/FUL, stated that the Management Plan was a material consideration to which significant weight was given - this could prove helpful in determining this application.

The applicant's agent's covering letter explains that the application to vary Condition 3 in respect of units A2 and D7 seeks for these units to be used for marine and non-marine related uses falling within Class B2, B8 and E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 to allow for greater flexibility in the use of the existing business units, to enable retention and creation of employment opportunities. The applicants substantiate their application with marketing evidence which appears to evidence active marketing of both units since 2019 and 2020 respectively for marine-related employment uses.

The adopted Local Plan and made Neighbourhood Plan represent the Development Plan and the starting point for the consideration of any planning application. The applicants have provided marketing evidence which would appear to meet the marketing requirements, including in relation to the Chichester Harbour Management Plan Planning Consideration "Safeguarding Marine Enterprise".

Nonetheless, the pre-text to Policy 26 places an emphasis on preserving marine-related uses and both the Birdham Neighbourhood Plan (Policy 23) and Chichester Harbour Management Plan PPO2 require that marine-related businesses must not be adversely impacted by a re-development/change of use. In this regard, it is considered that any variation of condition 3 should afford adequate protection to current marine-related businesses in order to reflect the overall policy aims.

6.7 CDC Economic Development

The Economic Development Service supports this application.

Despite continuing to be marketed at what we view as realistic rents units A2 and D7 remain vacant (see below for further comments on marketing). Allowing greater flexibility in the use of units A2 and D7 will increase the likelihood of them being

occupied and is therefore expected to result in the economic benefit of jobs being created at the marina.

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. Premier Marinas want to remain relevant and successful but they also realise the importance of making sure that the services that boat owners would expect are on site.

Regarding the marketing of units A2 & D7, in Chichester District Council's Statement of Case (SoC) for appeal reference APP/L815/W/21/3289832 the Council stated that the applicant, "has submitted an update which demonstrates that units A2 and D7 have been marketed for an appropriate period and at an appropriate rent" (see paragraph 5.4.5.2 of the Council's July 2022 SoC). The update which the applicant submitted included benchmarking against its two other south coast marinas which showed that Chichester marina's average rent of £12.47/sqft was lower than both Port Solent's £13.42/sqft and Swanwick's £19.50/sqft.

Since July 2022 units A2 and D7 have continued to be marketed at the same rent of £11.61/sqft for unit A2 and £12.84/sqft for Unit D7 (D7's rent falls to £7.54 sqft if the storage area is included) and both units still currently remain vacant. In our view the rents being asked in the marketing materials for A2 and D7 remain realistic as currently light industrial units in the Chichester District are being marketed in the range of £11/sqft to £13/sqft.

For these reasons, the Economic Development Service believes that for units A2 & D7 the marketing requirements of Appendix E of the Chichester Local Plan have been met and that it is important that these two units at the marina evolve with the economy.

6.8 Third Party Support

- a. Frustrating to see units vacant for months/years
- b. All related trades are very well represented in the marina
- c. Would support existing business having units occupied

6.9 Third Party Other

- a. Berth holders with larger boats require an appropriate balance of service support. A "man in a van" is not the whole solution and marine businesses with specialist expertise, workshops and tooling who operate within commercial premises adjacent to the haul out crane and boatyard remain important.
- b. Important not to price out the essential on-site marine businesses.
- c. Many units occupied by Premier owned business, leaving few units for marine uses.
- d. Henry Adams marketing does not mention marketing in the marine print or digital press.
- e. Haven't explored subdividing units.

- f. Marketing shows more interest from marine than non-marine tenants. Marketing refers to concerns about "covenant", "occupier budget not suitable" and "concerns about the costs" for the marine tenants but less so for others. - Were they all put off by unrealistic landlord expectations?
- g. Set a precedent for Unit C5.
- h. Ensure long term sustainability of the e Chichester Marina "ecosystem".

6.10 Applicants supporting comments

- a. Marinas are complex ecosystems that need to evolve.
- b. Impact of Covid-19 resulted in business closures and change in operations to a more footloose manner without waterside premises.
- c. 33.4% of available floorspace in the boatyard is currently unoccupied.
- d. The applicant expects a further 31.3% (10,615 sqft NIA) could become vacant upon expiry of leases end of November 2023 (subject to lease renewal discussions).
- e. Other sites owned by Premier marina not subject to stringent condition. Eg. Port Solent, Portsmouth 87% of occupants in "The Slipway" buildings are marine related tenants.
- f. Current condition overly restrictive and prevents successful letting of a number of a number of commercial units to a variety of interest occupiers, as their operations may not be principally marine related but are considered suitable and appropriate for a marina environment.
- g. Creation of jobs and supporting local economy.
- h. Marketing evidence confirms that commercial unit A2 has been actively marketed since 30 April 2020 and Unit D7 since 19 February 2019. This was accepted in the Council's SoC in appeal APP/L3815/W/21/3289832.
- i. The proposal would not be a departure from the local plan as the requirements of Policy 26 and Appendix E are met.
- j. The design of the units does not make subdivision practical.
- k. Business rates relief will no longer be available to most occupiers following the Government's latest rates review.
- l. Noss-on-Dart Marina benefits from marine and non-marine land use flexibility and is a good example of a high quality development in a sensitive AONB setting.

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

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

- 7.3 The Proposed Submission Local Plan was published for a 6-week consultation from 3 February 2023 to 17 March 2023 under Regulation 19 of the Town and Country Planning (England) Regulations 2012 (as amended). Following this the Plan will be submitted to the Secretary of State for Independent Examination, together with representations and a statement of consultation.

Relevant policies from the Chichester Local Plan 2021 - 2039: Proposed Submission (Regulation 19) are:

Policy S2 Settlement Hierarchy
Policy NE2 Natural Landscape
Policy NE10 Development in the Countryside
Policy NE12 Development around the Coast
Policy NE13 Chichester Harbour Area of Outstanding Natural Beauty

Policy NE21 Lighting
Policy NE22 Air Quality
Policy NE23 Noise
Policy P1 Design Principles
Policy P2 Local Character and Distinctiveness
Policy P6 Amenity
Policy E1 Meeting Employment Land Needs
Policy E2 Employment Development
Policy T2 Transport and Development
Policy T4 Parking Provision

National Policy and Guidance

- 7.4 Government planning policy now comprises the revised National Planning Policy Framework (NPPF 2023), which took effect from **20 December 2023**. 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:
- o The Chichester Harbour Management Plan Third Review (2019 - 2024)
 - o The Chichester Harbour AONB Joint SPD (2017)
 - o 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.
 - Develop a local workforce that meets the needs of local employers.
 - Support local businesses to grow and become engaged with local communities.
 - 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.

- 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
- iv. Flood Risk
- v. Highways

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, re-provision 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 73 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.

Further to this the Council published a Proposed Submission Local Plan under Regulation 19 on 3rd February 2023. At this stage, it is considered that moderate weight can be attached to the policies contained within the Proposed Submission Local Plan.

- 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'. Paragraph 16.8 of the adopted Local Plan is carried forward in the Proposed Submission Local Plan at paragraph 7.17.
- 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). Draft Policy NE13 Chichester Harbour AONB in the Proposed Submission Local Plan also carries forward the requirement for development to be consistent with the policy aims of the CHMP.
- 8.9 Planning principle PP01 of the CHMP requires that 'great weight to the protection of the landscape, the conservation of nature and the special qualities of Chichester Harbour, as defined in the AONB Management Plan and Landscape Character Assessment'. 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.' Change 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 **December 2024**) 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 class 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 which is subject to this application and 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).

8.23 Since the above appeal decision, planning permission has been granted under a S73 application on 11/11/2022 (reference: 22/01742/FUL) 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 café/restaurant floor area by 121sqm (50% increase). The amended condition did not specify the units within the building. The indicative plans accompanying 22/01742/FUL showed the existing café located in Unit D6 with back of house in Unit D4 (Unit D1 and part of Unit D3 on the original approved plans of 12/00475/FUL) and the extended café into Unit D5 (Unit D2 and part of Unit D3 on the original approved plans of 12/00475/FUL).

8.24 Having regard to the planning history and current policy 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

8.25 Both units are currently vacant. The applicants supporting statement states that Unit A2 has been actively marketed since 30 April 2020 and Unit D7 since 19 February 2019, this has been substantiated through evidence contained in the submitted document titled 'Commercial Marketing Overview' dated December 2022.

- 8.26 With regards to Unit D7 the Council's Statement of Case for appeal APP/L3815/W/21/3289832 stated; '5.4.3.1 At the time of determination, the Council acknowledged that the unit had been marketed for the prescribed period. However, due to the lack of benchmarking data to confirm that the rental being asked was realistic, it remained concerned that the exercise had not been undertaken realistically. 5.4.3.2 The appellant, in Appendix Two, supporting the Statement of Case provides some benchmarking by comparing rents at other marinas owned by the appellant. The Council would have liked to see a wider benchmarking exercise including premises in alternative ownership. It has therefore undertaken some research of its own, identifying similar premises at Hamble Point Marina and Port Solent Marina and based on this, considers that Unit D7 is being marketed at a realistic rate.'
- 8.27 This was not disputed by the Planning Inspector (as referenced in the above section) who found that there could be justification for adopting a more flexible use for unit D7. Since the determination of this appeal on 18/07/2022, the submitted supporting information with this application shows that there has been no further interest in the unit. The marketing of Unit D7 therefore meets the requirements of Appendix E and Policy 26 of the CLP and the marketing requirements of PPO2 of the CHMP.
- 8.28 With regards to Unit A2 the Council's Statement of Case for the appeal of application 21/00833/FUL (APP/L3815/W/21/3289832) stated; ' 5.4.2.1 At the time of determination the unit had been subject to marketing efforts for a period of 11 months, below the prescribed period of 18 months which is contained within Appendix E of the Chichester Local Plan which specifies the general requirements of marketing. 5.4.2.2 It is now accepted that the unit has been marketed for the requisite time period. It is also noted (on the Rightmove website that the unit is "under offer", one assumes to a business which is compliant with the existing planning restrictions. This somewhat undermines the appellant's general argument about lack of demand.'
- 8.29 The supporting information submitted with this planning application states that Heads of Terms were agreed in April 2022 for the unit to be rented to a company specialising in the storage and distribution of marine related electronics and Audio Visual equipment, but the letting did not happen. Officers have sought further clarification on this from the applicant. In an email dated 09/03/2023 the applicant's agent explained that 'the prospective tenant 'AVN Solutions' despite having a marine element to their business ultimately decided that the risk of investing in setting up in a unit at the marina with the possibility of the planning enforcement officer taking action was too great'. Unit A2 has therefore been marketed for a sufficient length of time to accord with the requirements of Appendix E and Policy 26 of the CLP and the marketing requirements of PPO2 of the CHMP. Furthermore, Officers consider that the amended condition, as sought via this application, will allow businesses that are not exclusively a marine enterprise but provide a marine element, such as AVN, to operate on the site. Such businesses would complement and not prejudice the businesses contained within the wider marina.
- 8.30 Officers note that Chichester Harbour Conservancy and Birdham Parish Council have objected to this planning application. The Conservancy acknowledge that the submitted statement indicates that the units have been marketed since 2019 and 2020. The Conservancy also acknowledge that that the proposed change of use

makes the units more flexible without removing the possibility of marine based occupation in the future. The Conservancy do however raise concern that if higher rental income is available to non-marine activities, traditional marine services could be 'priced out' and argue that this is contrary to the aims of and intention of policy PP02 of the CHMP. The Parish Council has also raised concern that the rent for the units is unrealistically high.

- 8.31 The Council's Economic Development Service supports this application and have commented that in their view the rents being asked in the marketing materials for A2 and D7 remain realistic as currently light industrial units in the Chichester District are being marketed in the range of £11/sqft to £13/sqft. Furthermore, allowing greater flexibility in the use of units A2 and D7 will increase the likelihood of them being occupied and is therefore expected to result in the economic benefit of jobs being created at the marina.
- 8.32 The Parish Council and a third party have commented that the subdivision of units has not been explored. It is clear from the differences in the approved plans and the development as built that Building A has already been subdivided into smaller units than that originally intended at the application stage for application 12/00475/FUL. Furthermore, the applicant has responded to the Parish Council's comments that 'the design of the units does not make subdivision practical'.
- 8.33 A third party has also raised that the Henry Adams marketing does not mention marketing in the marine print or digital press. Paragraph 2.19 of the Marketing Overview Statement sets out for Unit D7 advertisements were placed in the monthly "Boating Business" specialist marine trade publication. Evidence was submitted by email on 10/03/2023, that confirms that the advert appeared in the March 2019, June 2019 and September 2019 editions and web tile from March until September. It is noted that Unit A2 has not been advertised in such a publication, but both units have been advertised online on the websites for Premia Marinas, Henry Adams LLP, Estates Gazette and Rightmove commercial property.
- 8.34 The remaining units on the site would still be subject to the current restrictions of condition 3 and could only be used by marine related enterprises. This application seeks to allow units A2 and D7 to be used for Use Class B2 (general industrial), B8 (Storage or distribution) and ~~specific E(a) (Display or retail sale of goods, other than hot food) (Commercial Business and Service)~~ classes of the Town and Country Planning (Use Classes) (England) Regulations 1987 (as amended). These uses would complement and not prejudice the operations of marine enterprises across the wider marina and would not result indirect loss of marine enterprise.
- 8.35 There would be no alterations to the exterior or structure of the building and the variation of Condition 3 would still allow for Units A2 and D7 to be used by marine related enterprises if there was interest in the future. Whilst the amended condition cannot ensure that marine related businesses are given preference in the future occupation of these units, the applicant has stated in their submission documents that they are committed to championing marine-related businesses.
- 8.36 There would be no significant harm to the local economy. The variation of Condition 3 would likely enable long term vacant units to be filled, which would add to the vitality of the marina and generate jobs.

iii. Impact on the AONB

8.37 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.

8.38 The Planning Inspector stated the existing marine-based enterprises relate to the character of the AONB. Whilst the Chichester Harbour Conservancy have objected to the application they acknowledge that the character and atmosphere/ambiance of the AONB is unlikely to be substantially altered by this proposal.

8.39 Notwithstanding this, Officers have negotiated with the applicant on the specific use classes that could be acceptable in this location. Currently Unit A2 is restricted by condition 3 on 12/00475/FUL to be used for marine related uses only (with ancillary sales). These uses can include boat brokerage or Business uses (formerly Use Class B1, which includes offices, research and development and light industrial), general industrial (Use Class B2) and storage and distribution (Use Class B8). Given the relatively small size of this unit, 156m (18% of Building A), it is considered that subject to condition there would be no material harm to the tranquillity of the area by removing the marine only restriction, whilst keeping the same use classes and allowing the display or retail sale of goods, other than hot food.

8.40 Unit D7 is currently restricted to be used for Marine only Business uses (formerly Use Class B1, which includes offices, research and development and light industrial), general industrial (Use Class B2) and storage and distribution (Use Class B8) with ancillary sales, and/or a chandlery and a mixed use cafe/restaurant (as amended by application 22/01742/FUL). Unlike Unit A2, Unit D7 is a large unit measuring 376sqm (approximately 28% of Building D). Non-marine retail could result in a more intensive use of the site and without evidence to the contrary non-marine retail in this unit could result in the site becoming a retail destination, resulting in an increase in vehicular movements to and from the marina. As such officers have negotiated that any retail use of Unit D7 shall be restricted to marine uses only. Officers considered that the non-marine use of this unit as light industrial, general industrial or storage and distribution is unlikely to result in material harm to the tranquillity of the AONB above marine related uses.

~~8.41 There is a risk that non-marine related E(c) (i) Financial services, E(c)(ii) Professional services (other than health or medical services), E(c)(iii) Other appropriate services in a commercial, business or service locality and E(g) (i) Offices (ii) Research and development could without control result in intensification of the use of the site. To mitigate the risk of any intensification of the site, Officers recommend an additional pre-occupation condition requiring the submission of parking details and a travel plan should at anytime these units be used for non-marine E(c)(i),(ii),(iii) and E(g)(i)(ii) uses. Further to this a Unilateral Undertaking (legal agreement) would secure a financial contribution for the monitoring of this travel plan by WSGC Highway Authority.~~

8.42 Subject to the above, Officers consider 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.

iv. Flood Risk

8.43 The application site is located within flood zones 2 and 3. Paragraph 168 of the NPPF states that applications for changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments. This is also required by Policy 42 of the CLP.

8.44 Marinas are considered water-compatible development as set out in Annexe 3 Flood risk vulnerability classification of the PPG. Whilst buildings used for shops; financial, professional and other services; restaurants, cafes and hot food takeaways; offices; general industry, storage and distribution are classed as 'less vulnerable'.

8.45 Given that the original planning application (12/00475/FUL) sought 'less vulnerable' uses, and the current application also seeks 'less vulnerable' uses there is no material increase in the flood risk of the development. The original planning application was supported by a Flood Risk Assessment as part of an Environmental Statement which was considered acceptable in consultation with the Environment Agency, which commented that the finished floor levels of 4.4m AOD would likely prevent internal inundation and the flood resilience measures would help to protect the buildings against more extreme events and wave action at the site. This mitigation was secured by condition. As such officers are satisfied that the proposal accords with the requirements of Policy 42 of the CLP and the NPPF.

v. Highways

8.46 It is noted that the supporting text for policy C7 of the former of the Chichester District Local Plan First Review 1999 (now superseded), stated 'non-marine industrial activities could also generate more traffic on the narrow roads within the AONB leading to the boatyards'. Policy 39 of the current CLP requires that developments are located and designed to minimise additional traffic generation and movement and should not create or add to problems of safety, congestion, air pollution, or other damage to the environment.

8.47 Having regard to this, Officers have negotiated during the course of the application specific use classes that would be unlikely to result in a material increase in vehicular movements over that already permitted. The WSCC Local Highway Authority has commented on the application that there is no highway safety or capacity concerns associated with the current proposal.

~~8.48 As previously stated, Officers recommend an additional pre-occupation condition requiring the submission of parking details and a travel plan should at anytime these units be used for non-marine E(c)(i),(ii),(iii) and/or E(g)(i)(ii) uses. Further to this a Unilateral Undertaking (legal agreement) would secure a financial contribution for the monitoring of this travel plan by WSCC Highway Authority.~~

8.49 The proposal therefore accords with policy 39 of the CLP and the objectives of the superseded policy C7 of the Chichester District Local Plan First Review 1999.

Planning Obligations

8.50 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. As such, no deed of variation is required in this instance.

~~8.51 As previously mentioned, this recommendation is subject to a S106 agreement. This would be in the form of a Unilateral Undertaking to secure a financial contribution for the monitoring a travel plan by WSCC Highway Authority.~~

CIL

8.52 There are no amendments to floor space, as such there will be no implications to CIL requirements.

Significant Conditions

8.53 A new decision notice was issued under planning application 22/01742/FUL which carried forward all the relevant conditions from 12/00475/FUL with amendments where appropriate to reflect those that had been discharged. Condition 3 was amended to allow building D to have a mixed-use cafe/restaurant (use class Eb) to a maximum of 365sqm and reflect the amended Town and Country Planning (Use Class) Order. Reference to B1 was changed to E(g) as well as reference to use class A3/A4 being replaced by class E(b).

8.54 The conditions listed on the decision notice for 22/01742/FUL are proposed to be carried over in full, with the exception of condition 3 (now condition 4) that would be further amended as follows:

a) Buildings A, B, and C (**excluding Unit A2 as shown on plan number 23-4100-111 Rev PL3 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023**) shall be used for marine related uses only (with ancillary sales). These uses can include boat brokerage, E(g), B2 and/or 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) or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order).

Unit A2 as shown on plan number 23-4100-111 Rev PL3 ((Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) shall only be used for marine and non-marine related uses falling within Class B2, B8 or E(a) ~~E(c)(i), E(c)(ii), E(c)(iii), E(g)(i), E(g)(ii) and/or E(g)(iii)~~ of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose and notwithstanding any change permitted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

b) Building D (**excluding Unit D7 as shown on plan number 23-4100-112 Rev PL2 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023**) shall be used for

- i) marine related uses only (with ancillary sales) within E(g), B2 or B8, 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).

Unit D7 as shown on plan number 23-4100-112 Rev PL2 ((Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) shall only be used for marine and non-marine related uses falling within Class B2 or B8 E(c)(i), E(c)(ii), E(c)(iii), E(g)(i), E(g)(ii) and/or E(g)(iii) and marine only E(a) use of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose 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 and conserve the tranquillity of the AONB 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.

~~**8.55 In addition to this, an additional pre-occupation condition (condition 3) is recommended to require the submission of parking details and travel plan, as discussed in the earlier sections of this report.**~~

Conclusion

8.56 The marketing of Units A2 and D7 meets the requirements of Appendix E and Policy 26 of the CLP and the marketing requirements of PPO2 of the CHMP. The proposed flexible B2 (general industrial), B8 (Storage or distribution) and ~~specific E (Commercial Business and Service)~~ marine and non-marine uses of units A2 and D7 would complement and not prejudice the operations of marine enterprises across the wider marina and would not result indirect loss of marine enterprise, subject to the amended and additional conditions. There would be no alterations to the exterior or structure of the building and the variation of Condition 3 (now condition 4) would still allow for Units A2 and D7 to be used by marine related enterprises if there was interest in the future. The variation of Condition 3 would enable long term vacant units to be filled, which would add to the vitality of the marina and generate jobs. The proposal would conserve the character of the Chichester Harbour AONB and the development would be in accordance with Policy 43 of the CLP.

8.57 The proposal to vary condition 3 of 12/00475/FUL is considered acceptable and therefore the application is recommended for approval.

Human Rights

8.58 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

DEFER FOR S106 THEN 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 submitted with application

DD2205-01 Rev AB, DD2205-02 Rev AB submitted with application 22/01742/FUL.

23-4100-101 Rev PL3 (Drawing as-built), 23-4100-111 Rev PL3 (Drawing as-built), 23-4100-112 Rev PL2 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023.

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) Notwithstanding Condition 4, Unit A2 (as shown on plan number 23-4100-111 Rev PL3 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) and/or Unit D7 (as shown on plan number 23-4100-112 Rev PL2 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) shall not be first occupied by a non-marine business falling within use classes E(c)(i),(ii),(iii) or E(g)(i)(ii) uses of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) until a parking plan and travel plan associated with that use of the site, has been submitted to and approved in writing by the Local Planning Authority in consultation with West Sussex County Council as the Local Highway Authority. The Parking Plan and Travel Plan once approved shall thereafter be implemented as specified within the approved document and in accordance with the agreed timescales. The Travel Plan shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport or as~~

~~advised by the Highway Authority. The Parking Plan shall show the quantity and location of the parking spaces to be used by occupiers of Unit A2 and/or Unit D7.~~

~~Reason: To encourage and promote sustainable transport and to safeguard the amenity of the AONB.~~

4) a) Buildings A, B, and C (excluding Unit A2 as shown on plan number 23-4100-111 Rev PL3 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) shall be used for marine related uses only (with ancillary sales). These uses can include boat brokerage, E(g), B2 and/or 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) or in any provision equivalent to that Class in any other statutory instrument revoking and re-enacting that Order).

Unit A2 as shown on plan number 23-4100-111 Rev PL3 ((Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) shall only be used for marine and non-marine related uses falling within Class B2, B8 **or** E(a) ~~E(c)(i), E(c)(ii), E(c)(iii), E(g)(i), E(g)(ii) and/or E(g)(iii)~~ of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose and notwithstanding any change permitted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

b) Building D (excluding Unit D7 as shown on plan number 23-4100-112 Rev PL2 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) shall be used for

i) marine related uses only (with ancillary sales) within E(g), B2 or B8, 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).

Unit D7 as shown on plan number 23-4100-112 Rev PL2 ((Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) shall only be used for marine and non-marine related uses falling within Class B2 **or** B8 ~~E(c)(i), E(c)(ii), E(c)(iii), E(g)(i), E(g)(ii) and/or E(g)(iii)~~ and marine only E(a) use of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose 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 and conserve the tranquillity of the AONB 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.

5) 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.

6) 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.

7) 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.

8) 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.

9) 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.

10) 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.

11) 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

12) 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

13) 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.

14) 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.

15) Notwithstanding condition 4, upon each vacation of Unit A2 as shown on plan number 23-4100-111 Rev PL3 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) and/or Unit D7 (as shown on plan number 23-4100-112 Rev PL2 (Drawing as-built) submitted with application 22/03026/FUL on 15/03/2023) and commencement of marketing for rent or sale, the owner/landlord shall for the first 2 months of marketing, market the premises for marine related uses only, and thereafter for any of the permitted uses, unless otherwise agreed in writing by the Local Planning Authority. Evidence of marketing shall be maintained by the owner/landlord and records shall be kept up to date and available for inspection by the Local Planning Authority.

Reason: To safeguard 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.

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 should be 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 **Jo Bell on 01243 534899**.

To view the application use the following link -

<https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=RM40TXERGF200>