

Application Number: 24/10522 Variation / Removal of Condition

Site: THE BOATYARD, ENDEAVOUR WAY, HYTHE MARINA VILLAGE, HYTHE SO45 6LA

Development: Variation of condition 2 of Planning Permission 09/94047 to enable any marine-related business to operate from the units within the Boatyard and to allow for the repair and servicing of boats, irrespective of where they are berthed or how they are transported to and from the site

Applicant: Marina Developments Limited

Agent: Luken Beck mdp Ltd

Target Date: 14/08/2024

Case Officer: John Fanning

Officer Recommendation: Grant Subject to Conditions

Reason for Referral to Committee: Parish Council contrary view

1 SUMMARY OF THE MAIN ISSUES

The key issues are:

- 1) Planning history
- 2) Principle of development
- 3) Commercial use
- 4) Highways and amenity
- 5) Ecology

2 SITE DESCRIPTION

The application site, known as 'The Boatyard' lies off Southampton Water, just outside of the northern edge of the defined built-up area of Hythe. The site is adjacent to the Hythe Marina.

The site consists of 4 commercial units across 3 separate buildings, along with an area of hardstanding used for the storage of boats/vehicles associated with the commercial operation. 'Unit 1' and 'Unit 2' are situated along the north-eastern boundary of the site, adjacent to the water frontage, while 'Unit 3' and 'Unit 4' are situated together in a smaller building running parallel to the access along Endeavour Way. The site as a whole is 1.06ha, with the majority of this area being utilised for hardstanding associated with parking/storage of boats/vehicles associated with the commercial use.

The application site is subject to Policy DM11 of the Local Plan, which identifies specific sites within the district that provide wharves or other boat launching facilities, making them suitable for marine related businesses. The policy identifies that new development in these locations should be designed to ensure the retention of existing wharves, boat launching facilities and associated vehicular access.

The adjacent marina to the south of the site contains a significant number of residential properties. The marina is accessed off West Street, with a single highway access to the southern corner. There is an area of allocated open space to the south-west of the site.

The land to the west and north-west of the site is currently open but is subject to Policy ECON4 of the Local Plan, which identifies land for possible port development at Dibden Bay, subject to any Development Consent Order.

The coastal areas close to the east of site comprise a number of designated protected habitats, with areas identified as a Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) and Ramsar designation.

3 PROPOSED DEVELOPMENT

The application seeks to vary Condition 2 of Planning Permission 09/94047 (described in Section 4 below), which states:

"The buildings shall only be used for the servicing and repair of boats normally berthed at Hythe Marina and for the servicing and repair of boats which arrive at and depart from Hythe Marina by sea and for no other purpose including any other which might have otherwise been allowed by the Town and Country Planning (Use Classes) Order 1987."

The application specifically seeks to vary this condition so as to allow the use of the units at The Boatyard by any marine related business, which would include uses not associated with the servicing or repair of boats. The application also seeks to vary the condition to allow for the servicing/repair of boats which are not berthed at the marina or which arrive at the site by other means (i.e. by road).

A similar application was previously submitted under application reference 23/10645 but was withdrawn by the applicant prior to determination. When compared to the previous application, the current application has been submitted with an amended certificate of ownership and additional supporting information in relation to the transportation impacts of the development.

4 PLANNING HISTORY

Proposal	Decision Date	Decision Description	Status	Appeal Description
23/10645 Variation of condition 2 of planning permission 09/94047 to enable the servicing and repair of boats which are not normally berthed at Hythe Marina to be extended to boats which are transported to and from the site by road, with such boat movements by road to be undertaken only between the following hours: Monday – Friday 0900-1800; Saturday 0900-1300; no access by road on Sundays and Bank Holidays	13/09/2023	Withdrawn by Applicant	Withdrawn	
09/94047 Erection of new industrial buildings and associated mounding adjustments (Variation of Condition 2 of Planning Permission 81561 to allow	14/07/2009	Refused	Appeal Decided	Appeal Allowed in Part

work on boats not based at Hythe Marina)

06/88131 Continued temporary siting of 1 boat repair workshop building (Part renewal of Temporary Permission 81428)	02/08/2006	Grant Temporary Permission	Decided
04/81561 Erection of new industrial buildings and associated mounding adjustments (Extension of Time Limit on Planning Permission 66139)	06/07/2004	Granted Subject to Conditions	Decided
04/81428 Continued temporary siting of 3 boat repair workshops (Renewal of Planning Permission 71433)	18/06/2004	Grant Temporary Permission	Decided
01/71433 Continued temporary siting of 3 boat repair workshops - Renewal of PP 63510	11/05/2001	Grant Temporary Permission	Decided
99/66139 Erection of new industrial buildings and associated external works including mounding adjustments	14/06/1999	Granted Subject to Conditions	Decided

5 PLANNING POLICY AND GUIDANCE

Local Plan 2016-2036 Part 1: Planning Strategy

Policy CCC1: Safe and healthy communities
Policy CCC2: Safe and sustainable travel
Policy ECON1: Employment land and development
Policy ECON2: Retention of employment sites and consideration of alternative uses
Policy ENV3: Design quality and local distinctiveness
Policy STR1: Achieving Sustainable Development
Policy STR3: The strategy for locating new development
Policy STR4: The settlement hierarchy
Policy STR6: Sustainable economic growth
Policy ENV3: Design quality and local distinctiveness

Local Plan Part 2: Sites and Development Management 2014

DM2: Nature conservation, biodiversity and geodiversity
DM5: Contaminated land
DM6: Coastal Change Management Area
DM11: Sites for marine-related businesses and access to the water
DM22: Employment development in the countryside
DM24: Loss of rural employment sites, shops, public houses and community facilities

Core Strategy 2009

CS21: Rural Economy

Neighbourhood Plan

Hythe and Dibden Neighbourhood Plan
Policy BZ1 - Dibden Bay operational boundaries defined
Policy BZ2 - Establish a Buffer Zone around the operational port

Policy BZ3 - Ensure the extent of the Buffer Zone is sufficient

Policy WEL1 - Development proposals should seek to support public health, active lifestyles and community wellbeing

Policy WEL2 - New developments should be designed so as not to exacerbate, and where possible improve, air pollution, traffic congestion, road safety and parking. New residential developments should provide infrastructure for charging electric vehicles.

National Planning Policy Framework

National Planning Policy Guidance

6 PARISH / TOWN COUNCIL COMMENTS

Hythe & Dibden Parish Council: Recommend REFUSAL.

The Committee has concerns over the unsuitability of the access routes (Jones Lane/West Street) to Hythe Marina for HGVs. West Street is too narrow for HGVs, and Jones Lane has a narrow railway bridge and a mini roundabout which are both difficult to navigate for HGVs.

There has been a recent issue of major subsidence on the road directly outside of the Marina which is causing significant inconvenience to local residents and which suggests that the road is unsuitable for large/heavy vehicles.

An increase in HGV road movements to, from and in the Marina will have a negative impact on residents' quality of life.

Hythe Marina is adjacent to Dibden Bay, which is designated as a SSSI. Any increase in HGV movements and the resultant increase in emissions and noise could have a negative effect on the site.

7 COUNCILLOR COMMENTS

No comments received

8 CONSULTEE COMMENTS

HCC Highways:

The Highway Authority have no objection to the variation of condition 2, to allow marine related business to operate from the units within the Boatyard. This variation of condition 2 will result in a minor increase in trips; however, this is acceptable in this instance.

HCC Rights of Way:

No objection

Environmental Health (Pollution):

No objection subject to a suitable conditions restricting the Use Classes that are allowed to operate and proposed hours of operation.

Natural England:

No specific comment (refer to standing advice)

9 REPRESENTATIONS RECEIVED

A total of 119 representations were received from different individuals/groups. The following is a summary of the representations received:

Highways/access concerns

- Limited highway capacity in surrounding area
- Harmful impact on highway safety
- Exacerbation of existing highway congestion
- Boatyard was originally designed to serve only the needs of existing occupiers
- Concerns that submitted transport statement fails to accurately address potential impacts of proposal
- Parking areas/access not accurately identified on plans
- Potential disruption of access for emergency vehicles
- Access road is a private road/costs associated with maintenance associated with heavy duty vehicles/road has suffered damage previously

Amenity concerns

- Excessive intensification of commercial use in proximity to residential properties
- Harmful impact/disruption associated with larger vehicles

Use

- No clear economic justification for proposal
- Alternative commercial uses of the site would be more appropriate
- Other sites in the district would be more appropriate

Procedural concerns

- Contrary to previous decisions/Planning Inspector's decision, which cannot legally be overturned
- Applicant is unlikely to comply with potential restrictive conditions
- Lack of consultation with residents
- Contrary to restrictions in leases

Ecology

- Potential for additional ecological impacts associated with use

10 PLANNING ASSESSMENT

Planning History

The existing use of the site was originally approved in 1999 on the basis that it would provide a service for the adjacent marina - specifically providing servicing and repair facilities for boats berthed at the adjacent marina.

Initially, a temporary 5-year Planning Permission was granted for the 'Erection of new industrial buildings and associated external works including mounding adjustments in June 1999 under application reference 99/66139. This permission included a condition (Condition 2) restricting the use as follows:

"The buildings shall only be used for the servicing and repair of boats normally berthed at Hythe Marina and for no other purpose including any other which might otherwise have been allowed by the Town and Country Planning (Use Classes) Order 1987."

The stated reason for this condition was:

"Such buildings are contrary to Local Plan policies but are granted permission as an exception in this case as they are considered to be justified to meet the particular needs of Hythe Marina."

Following on from this, a further application was submitted under reference 04/81561 for 'Erection of new industrial buildings and associated mounding adjustments (Extension of Time Limit on Planning Permission 66139)'. This permission was granted on a permanent basis but reimposed the same condition, requiring the buildings to be used only for the servicing and repair of boats normally berthed at Hythe Marina.

A subsequent application was submitted under application reference 09/94047 for 'Erection of new industrial buildings and associated mounding adjustments (variation of condition 2 of planning permission 04/81561 to allow work on boats not based at Hythe Marina)'. The proposal was taken to a committee with a recommendation to grant permission but was subsequently refused on the following basis:

"The proposed development would result in additional vehicular movements of boats to and from the site in close proximity to residential properties at Hythe Marina. This additional vehicular movement of boats not currently berthed at Hythe Marina, would be likely to result in increased levels of noise and disturbance to the detriment of the amenities of these nearby residential properties. The proposal would therefore fail to comply with policies DW-E1 and CO-B2 of the New Forest District Local Plan First Alteration."

This decision was subsequently appealed, and the appeal was allowed in January 2010 but only insofar as it related to a partial rewording of the condition as follows:

*"The buildings shall only be used for the servicing and repair of boats normally berthed at Hythe Marina **and for the servicing and repair of boats which arrive at and depart from Hythe Marina by sea** and for no other purpose including any other which might have otherwise been allowed by the Town and Country Planning (Use Classes) Order 1987."*

In coming to the decision on the application, the Inspector considered the potential impacts on nearby residents and other commercial uses and whether alternatives could address these concerns. The original condition restricted the use to relate to boats which were 'normally' berthed within the marina. The Inspector was concerned with the potential frequency of boats being brought to the site by road and the potentially harmful impact this could have on balconies and amenity spaces in proximity to Endeavour Way. However, in imposing the amended condition, the Inspector found that allowing additional use of the site, limited to boats arriving at the marina by sea, would strike an appropriate balance between maintaining the commercial viability of the boatyard and the need to minimise the harmful impact on living conditions caused by larger vehicle movements.

It should be noted that, as currently worded, there is no restriction against a boat berthed at the marina being taken from the Shamrock Way slipway and transported through Shamrock Way and Endeavour Way to the application site. Nor is there a specific restriction controlling management of delivery of boats for wider berthing at the Marina itself.

More recently, an application was submitted in 2023 under application 23/10645 which sought the variation of the condition, but which was subsequently withdrawn prior to determination. The application at the time was submitted with Certificate A

being signed (certifying that no-one except the applicant had an interest in the land to which the development related). The current application has been submitted with Certificate B being signed (identifying Hythe Marina Limited and New Forest District Council as having an interest in the land). The current application has also been submitted with further supporting documentation in relation to the transport implications of the proposed development.

The application proposal

The current application seeks a variation to Condition 2 of Planning Permission 09/94047. The application has proposed that the wording of condition 2 be amended as follows:

"The buildings shall only be used by marine-related businesses and for no other purpose including any other which might have otherwise been allowed by the Town and Country Planning (Use Classes) Order 1987 (as amended)."

The effects of amending the condition in this way would be twofold. Firstly, it would remove the current restriction that repairs / servicing can only be carried out to boats which are berthed at Hythe Marina or which arrive at the site by sea. As such, the proposal would allow for the transport of boats to the site by road.

Secondly, amending the condition, as proposed, would allow for a wider range of potential uses of the site, including uses outside of boat repair - for example, retail sales associated with a marine-related use.

A further condition has also been suggested by the applicant in an effort to mitigate concerns in relation to the impact associated with additional vehicles coming to and from the site. Specifically, the applicant has suggested the following condition:

"Vehicular access by vehicles above 3.5 tonnes to The Boatyard and Hythe Marina shall be limited to the following hours:

Monday-Friday 09:00-18:00

Saturday 09:00-13:00

No access by road on Sundays and bank holidays."

The appropriateness of this condition is assessed below.

The Principle of development

The site lies outside of the defined built-up area. Policies DM22 and DM24 of the Local Plan both support the retention of existing employment uses within the countryside subject to the provision that they would not be harmful 'by reason of visual impact, traffic and other activity generated'. Policy DM11 provides further context in this case with regard to the Hythe Marina Boat Yard being identified as a site 'particularly suitable for marine-related businesses'.

In general, the operation of the site for marine related commercial activity is supported. It is noted that in this case, the application is seeking the continued operation and expansion of a previously granted permanent permission on the land.

However, it must also be noted that the proposal to allow use of the site by any 'marine-related business' might potentially allow occupation of the site by uses (such as a marine themed retail store) that would not be appropriate in a defined countryside location. It is therefore considered appropriate to restrict the use of the site to those employment uses that are compatible with the site's countryside location. In this regard, it is considered that marine-related business uses falling within Use

Class E(g) would be appropriate and would comply with policy in principle. Use Class E(g) is defined as follows.

Uses which can be carried out in a residential area without detriment to its amenity:

- *E(g)(i) Offices to carry out any operational or administrative functions,*
- *E(g)(ii) Research and development of products or processes*
- *E(g)(iii) Industrial processes*

More detailed impacts are considered below, but in principle, taking into account the site's location, the marine-related business uses operating from the site should be restricted to those falling within Use Class E(g) and the previously permitted servicing / repair uses. The existing lawful use as a boatyard would typically fall within the wider Class B2 Use Class. However, taking into account the previous specific conditions restricting the use solely to certain types of boat repair only, it is necessary to consider any further widening of the scope of the condition.

Existing and proposed commercial use

Policy ECON2 identifies that sites which remain suitable for employment use should be retained in such uses wherever possible. Policy DM22 identifies that outside of the defined built-up area, employment uses will be permitted subject to a number of considerations, including local design, scale, appearance, character, visual impact, traffic or other activity.

As part of the submitted Planning Statement to support the submission, the applicant has highlighted the important role the local businesses play within the local economy and raised concerns that the limitations on the operation of the site have a potential implication on the continued economic viability of the Boatyard site (and wider Hythe Marina).

The existing lawful use of the entire site is for boat servicing and repair. Units 1 and 2 were occupied by the Bucklers Hard Boatyard up until May 2024, for a use repairing and servicing of boats. Following this date, Unit 1 has remained vacant. Unit 3 was occupied by Triskel Marine (a marine engineering company) from August 2023 to February 2025, but they have since relocated to Unit 2. Unit 3 is expected to be occupied by a yacht services company. Unit 4 has been occupied by PM Divers (a commercial diving company) since August 2023. The applicant has advised that Unit 1 has been marketed since August 2024 and while some interest has been received, no firm offers for tenancy have resulted. The applicant has advised they have had interest from a number of marine and non-marine related commercial operators but no substantive interest for further boat repair operators.

It is noted that the current partial occupation by Triskel Marine and PM Divers, who do not service and repair boats and whose use appears to fall within Use Class E(g), is in breach of the extant condition, and the proposal is therefore partly to regularise the existing circumstances of the site.

Limited evidence has been submitted to demonstrate that the operation of the site would not be viable without an amendment to the condition. As such, with regard to the provisions of Policy ECON2 and DM22, while the continued operation of the site for employment use is supported in principle, no special weight is afforded to the viability of the existing use. Nonetheless, the wider implications of the proposed commercial use need to be considered, and any condition which impacts on this commercial operation should only be imposed where the condition is necessary.

Transportation impacts & highway safety

Policy ENV3 notes that developments should be designed so as to be safe to access, whilst Paragraph 8.16 of the Local Plan recognises that safe site access and the impact of new development on the capacity and safety of the transport network are important planning considerations.

As such, one of the key considerations is the suitability of the site and access to accommodate the additional highway movements that would be generated by the proposed variation of condition.

The marina as a whole is serviced by a single vehicular access off West Street to the southern corner of the marina. The marina is serviced by two main access roads, with Shamrock Way running around the eastern side and Endeavour Way running around the western side, with both having offshoot roads which provide access to residential properties and berths within the marina. The application site is serviced by Endeavour Way and positioned in the northern corner of the marina. Substantial concern has been raised by local residents in relation to the potential impacts of the development in terms of highway safety, damage to the highway and associated amenity implications.

The application has been submitted with a supporting Transport Statement. The report identified that surveys were undertaken in March 2024 to assess the existing traffic movements within the wider marina as a whole towards the far end of Endeavour Way and Shamrock Way (beyond the residential parts of the marina). The survey was conducted between 07:00 (7AM) and 19:00 (7PM). Residents have identified that this period coincided with a period of repairs to the marina lock, which may have resulted in a change in the pattern of vehicles visiting the site. In response, the applicant's transport consultant has stated that works to the marina lock form part of the normal operational use of the marina and are not considered to have significantly altered the findings. Any additional traffic associated with repairs would need to be balanced against a potential reduction in trips associated with periods of downtime. Overall, whilst accepting that the surveys represent a snapshot in time, it is considered that the applicant's Transport Statement enables a reasonable assessment to be made of the potential transportation impacts of the proposed development.

The study sought to compare the existing trip generation (noting the two existing units occupied contrary to the condition) with a comparative potential trip generation of a proposed use, by comparing the site to trip rates at Northney Marina (Hayling Island). The Northney Marina site covers 1,145m².

The existing floor space of the buildings in the application site is 555m², of which 409m² is taken up by units 1 and 2 and 146m² is from units 3 and 4, which are already occupied in breach of the condition by other marine related non-boat repair uses. At the time of the traffic survey, 146m² of floor space was already operating in breach of the condition and would therefore have been captured within the survey. On this basis, the traffic report has taken a cumulative approach, looking at a change in use of the full 555m² floor area in accordance with the details outlined.

For the purpose of the survey, a vehicle entering and then leaving the site constitutes 2 vehicle movements. The traffic survey estimated the proposed net change based on a 'typical weekday' and a 'typical Saturday' (numbers drawn from section 3.2.6, Table 3.3 and 3.4 of the submitted Transport Statement):

	Existing	Proposed	Net change (vehicle movements)
Typical weekday	105	163	58
Typical Saturday	59	93	34

A breakdown of the provisional impact across the day was provided, with the peak impact estimated to be at 10:00-11:00 on a weekday, with an estimated net increase of 10 vehicle movements per hour. On Saturday, the peak impact was estimated as being between 12:00-13:00, with an estimated net increase of 6 vehicle movements. The above figures incorporate all estimated vehicle movements of all types. A further breakdown of estimated light good vehicle (LGV) and heavy good vehicle (HGV) movements is outlined in section 3.2.4 of the Transport Statement and supporting email (dated 02.04.25):

	Existing	Proposed	Net change (vehicle movements)
Typical weekday (LGV)	30	7	-26
Typical weekday (HGV)	6	0	-6
Typical Saturday (LGV)	12	4	-8
Typical Saturday (HGV)	0	0	0

As such, the applicant's Transport Assessment indicates that there would be a shift away from larger commercial vehicles visiting the site but an overall increase in smaller vehicles, which would be associated with the shift from the more industrial Class B2 use to the wider variety of uses within Class E(g). An office, for example, is less likely to receive larger commercial deliveries and more likely to see an increase in traffic associated with the comings and goings of on-site staff.

The proposed variation of condition would allow for the wider delivery of boats to the site by road, though, based on the above, it is not anticipated that such movements would be significant in number. The Highway Authority have reviewed the proposal and have not raised an objection with regard to the delivery of boats to the site by road, although they have noted that the transit of any unusually wide or large vehicles by road may require an abnormal loads licence which would be addressed on an individual case by case basis.

Concern has also been raised that the proposal could exacerbate existing maintenance issues associated with sink holes within the proximity of the application site. The appropriate maintenance of a highway or private access is ultimately the responsibility of the Highway Authority or relevant landowner.

With regard to paragraph 116 of the NPPF, development should only be refused on highway grounds where there is an identified unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe and cannot otherwise be mitigated. In this case, the Highway Authority have reviewed the proposal as it relates to the public highway and raised no objection.

The proposed traffic would make use of the existing authorised access to the site and no objection has been raised by the Highway Authority. With regard to the submitted transport assessment and comments of the Highway Authority, while there would be an increase in trips associated with the site, it is not considered that an objection can

reasonably be raised on the grounds of highway safety. It is considered that vehicles can safely utilise the route, and the maintenance of the private road would fall within the responsibility of the relevant parties to manage.

On the basis of the above, it is considered that the proposal would comply with highway safety considerations as outlined in Policy ENV3 and in the Local Plan more generally.

Notwithstanding this conclusion, it is recognised that such a change would also have a wider impact on residential amenity, which is considered in more detail below.

Amenity

Policy ENV3 identifies that development should be sympathetic to its context and should avoid unacceptable effects on local character and residential amenity as a result of noise or other adverse impacts.

The proposal would alter the way in which the existing commercial use could operate. It would therefore have some potential impacts on the amenity of nearby residents due to changes in activity within the site as well as changes to the patterns of comings and goings to the site.

As such, a key consideration, as raised by the 2010 appeal decision, relates to the amenity impacts associated with additional comings and goings, with particular regard to larger transportation vehicles associated with boats being transported to and from the site by road.

In coming to the decision to refuse application 09/94047, the Local Planning Authority concluded that the additional vehicle movements would have a harmful impact in terms of noise and disturbance. In the subsequent appeal, the Inspector gave particular regard to the impact on properties fronting onto Endeavour Way and found a potentially harmful impact.

The appeal decision was determined in January 2010. Since the determination of that appeal, a number of amendments have been made to the local and national planning policy framework. The policies quoted in the reason for refusal (Policy DW-E1 and Policy CO-B2 (new employment in the countryside) are no longer applicable. At a local level, the appeal decision pre-dates the adoption of the current New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management document in April 2014 and the Local Plan 2016-2036 Part One: Planning Strategy in July 2020. However, the broad circumstances and context of the site remain similar.

The current application has been submitted with a supporting transport statement which provides a much better understanding of the existing and proposed transport implications of the development. With regard to the comparative transport survey, it is estimated that the proposal will result in an average of 4.8 additional vehicle movements per hour on weekdays and 2.8 per hour on weekends, but with that increase being associated with a shift to a larger number of smaller vehicles associated with the Class E(g) use when compared to the more industrial Class B2 Use.

Generally speaking, it is considered additional smaller vehicle movements would integrate comfortably with the existing residential and commercial traffic within the marina. The key area of concern relates to additional larger vehicle movements. However, as outlined in more detail above, the number of HGV movements arising from the proposed variation of condition is not anticipated to be significant, with it

being estimated by the applicant's transport consultant that there would be no such movements to and from the site on most days.

It is important to note that the current condition restricting the site does not specifically prevent HGV movements associated with the use, instead restricting the boat repair and servicing use to those boats berthed at the marina or which arrive by sea. HGV movements associated with the use which do not involve the delivery of boats to the site are unrestricted at present.

It is also important to note that the rest of the marina is not subject to any restrictions in terms of accepting boats transported by road. The applicant has recommended a potential condition to cover the entire marina, restricting access to the site for vehicles above 3.5 tonnes, on the basis that this would represent a betterment on the existing situation for surrounding occupiers. However, it is considered unreasonable to impose a condition relating to the wider Hythe Marina, as this land falls outside of the red line area of the application site. The development being considered relates to a specific commercial area, and any potential condition must relate specifically to the development being permitted and not to adjacent land.

The Council's Environmental Health team have reviewed the proposal in terms of potential additional noise and activity associated with the use. They have raised no objection to the proposal and have not raised any concerns relating to boats being transported to the site by road. To ensure the proposed variation of condition does not harm residential amenities, the Environmental Health Officer has suggested that hours of use be controlled and that the use be restricted to uses that are compatible with a nearby residential area.

As such, given that the proposal would be expected to give rise to only a small number of HGV and LGV movements - that would be fewer in number than at present, and given that business uses falling within Use Class E(g) are, by definition, uses that can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit, it is considered that the proposal would not cause unacceptable harm to the amenities of nearby residential properties. Whilst there would be a modest uplift in smaller vehicle movements associated with the development, this would not result in such harm to the amenity of nearby residents as to justify refusing the application. From a noise and amenity perspective, it would therefore be appropriate to accept the proposed variation of condition.

In considering the precise wording of the new condition and the need for any additional condition, it is noted that the buildings themselves are situated over 50 metres away from the closest residential dwellings, and at present there are no conditions restricting the hours of operation of the existing boat repair and servicing use. Given the degree of separation between the buildings and existing dwellings and the nature of the proposal, it would not be reasonable to control hours of use.

On this basis, and having regard to the whole of the above assessment, it is recommended that the condition be amended as follows:

"The buildings shall only be used by marine-related businesses falling within Use Class E(g) or for the servicing and repair of boats and for no other purpose, including any other which might have otherwise been allowed by the Town and Country Planning (Use Classes) Order 1987 (as amended) or Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)."

While no objection has been raised to this application by the Council's Environmental Health team, it is accepted that the specific impacts associated with the delivery of boats could have an adverse impact if deliveries or collections were to take place outside of normal working hours.

As such, an additional condition is recommended restricting delivery of boats to the following hours in order to minimise the potential for disruption to nearby residential occupiers during such deliveries:

Monday-Friday: 09:00-18:00

Saturday: 09:00-13:00

Sunday, bank and public holidays: No deliveries

The applicant had proposed a condition to restrict deliveries to the wider marina site, which as outlined above is not a reasonable requirement of the development being proposed.

On the basis of the above, it is considered that the amenity impacts associated with a change in the pattern of vehicles coming and going from the site can be mitigated and controlled by the use of conditions and, as such, would be consistent with Policy ENV3.

Ecology

Policy DM2 identifies that development should not result in harm to nearby sensitive habitats and that, where necessary, conditions should be used to control and mitigate the impacts of development.

The site is situated in close proximity to sensitive habitats, both in terms of the waterfront and adjacent land to the east, with the site itself lying just outside of the defined built-up area, the boundary of which sits immediately to the south of the site. The existing and proposed uses both utilise the same existing commercial floorspace on the site, with no alterations to the built form. Any ecological impact would primarily be associated with the change in pattern of comings and goings to the site. Natural England were consulted on the application but declined to comment on the proposal. The proposed amendments would result in some changes to how the site would operate, but the impact on adjacent protected sites will likely be negligible in the context of the existing lawful use of the site. As such, it is not considered that the proposal would have a harmful impact on the adjacent sensitive habitats or otherwise be harmful to the wider character or setting of the area and would thereby comply with the requirements of Policy DM2.

11 OTHER MATTERS

Concerns have been raised by local residents that the development would cause additional costs for local residents associated with additional vehicle movements, increasing the rate at which repairs need to be undertaken on the existing private accessway. The proposal relates to an extant commercial use. Private financial interests would not typically be considered a material planning consideration.

Concerns were also raised that the proposal would be contrary to restrictions within the lease of the premises. Restrictions within a lease are a separate legal consideration, outside of the planning system. No weight can be afforded to a covenant/lease restriction as part of the planning process (though any planning application also would not overrule such a restriction).

12 CONCLUSION / PLANNING BALANCE

With regard to the issues outlined above, the site has a marine related industrial use and is occupied by buildings that can be lawfully used for the servicing and repair of boats berthed at Hythe Marina or which are brought to the site by water. With reference to Policies DM11, DM22 and DM24, it is considered that the proposed variation of condition, allowing a broader range of uses, and allowing boats to be brought to the site by land would be acceptable in principle, provided this can be done without adverse impacts on the environment, residential amenity or highway safety.

The impacts of the proposed variation of Condition 2 of Planning Permission 09/94047 have been carefully considered with regards to highway safety. No objection has been raised by the Highway Authority and no objection was raised with regard to the identified trip rate data. From a highway safety perspective, the proposal therefore accords with Policy ENV3 of the Local Plan.

Consideration was given as part of a previous appeal decision on the site as to whether the relaxation of the condition was appropriate, and an Inspector at the time raised concerns in relation to residential amenity arising from potential additional comings and goings. This resulted in the current restriction that the site could only be used for the servicing of boats delivered to the site by sea or which were berthed at the marina.

In considering the current application, it is noted that the proposal is not only seeking the variation of the condition to allow for the servicing and repair of any boat, transported to the site by any means, but it also seeks to allow a wider suite of marine-related business to occupy the site. Within the context of the existing commercial use of the site, it is not considered that permitting a wider marine-related business use would result in a pattern of visits to the site which would be harmful to the amenities of nearby residential occupiers. No objection is therefore raised to the relaxation of the condition to allow other marine related business uses, provided these 'additional' uses fall within Use Class E(g).

With regard to the specific impacts associated with additional on-road vehicle movement of boats, an additional condition is recommended, limiting the hours of delivery / collection to and from the site to Monday-Friday 09:00-18:00, Saturday 09:00-13:00 and at no time on Sundays or public bank holidays which would provide protection for residential occupiers outside of typical working hours. Subject to such a condition, on balance, it is not considered that the proposal will result in such harm to residential amenity as to justify refusing the application and, as such, the proposal would be compliant with the requirements of Policy ENV3.

Consideration has been given to the relationship of the development to nearby sensitive habitats. Given the existing lawful use of the site, it is not considered that the proposal would result in additional impact pathways and, as such, would not be contrary to Policy DM2.

On this basis, the application is recommended for conditional approval.

13 RECOMMENDATION

GRANT the VARIATION of CONDITION

Proposed Conditions:

1. The buildings shall only be used by marine-related businesses falling within Use Class E(g) or for the servicing and repair of boats and for no other purpose, including any other which might have otherwise been allowed by the Town and Country Planning (Use Classes) Order 1987 (as amended) or Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Reason: To safeguard the amenities of residential properties at Hythe Marina in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

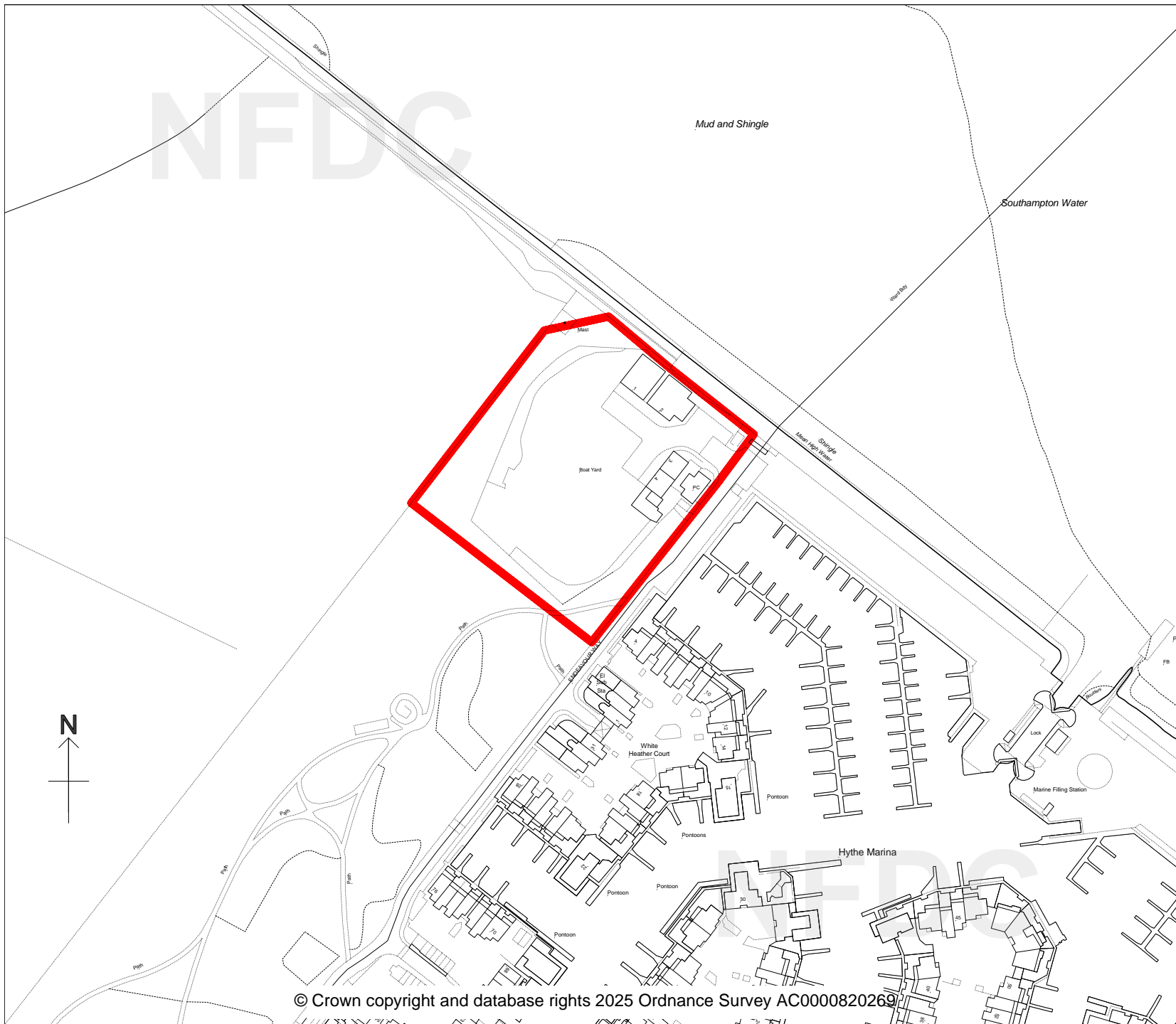
2. Any boat which is not normally berthed at Hythe Marina shall not be delivered to or collected from the site where transfer is overland or by road other than between the hours of 9am to 6pm Monday to Friday and 9am to 1pm on a Saturday. No deliveries or collections of boats not normally berthed at Hythe Marina where transfer is overland or by road shall be made on Sundays or bank and public holidays.

Reason: To safeguard the amenities of residential properties at Hythe Marina in accordance with Policy ENV3 of the Local Plan 2016-2036 Part One: Planning Strategy for the New Forest District outside of the National Park.

Further Information:

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PLANNING COMMITTEE

June 2025

The Boatyard
Endeavour Way
Hythe Marina Village
24/10522

Scale 1:2359

N.B. If printing this plan from
the internet, it will not be to
scale.