

## DELEGATED OFFICER REPORT

**Application Ref:** F/24/96805

**Site Address:** Located within Mercury Marina, north of The Gaff Rigger and adjacent to the pontoons

**Case Officer:** Summer Sharpe

**Description:** Erection of 2no. containers and installation of decking.

| Particular Site Constraints?                                                                                                                                                                       | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
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| <ul style="list-style-type: none"><li>- Countryside</li><li>- Flood Zones 2 &amp; 3</li><li>- Solent Mitigation &amp; Disturbance Zone</li><li>- Old Bursledon Conservation Area (north)</li></ul> |                                         |                             |

| Planning History?                                                                               | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
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| There has been numerous planning applications at the site, and within the wider Marina complex. |                                         |                             |

| Publicity:                | Letters <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Site Notice <input checked="" type="checkbox"/> | Newspaper <input checked="" type="checkbox"/> |
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| Representations:          | None received.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                 |                                               |
| Parish Council:           | None received.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                 |                                               |
| EBC Contaminated Land:    | <p>The site is located within an identified contaminative area; however, it appears that the proposed erection of 2 containers and decking for paddle boarding business does not involve any disturbance of the ground (as no foundations required). If so, then we raise no objection from contaminated land perspective.</p> <p>The proposed development is not located within a residential area, and due the nature of the proposed business we have no pollution concerns.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                 |                                               |
| EBC Conservation Officer: | <p>No objection.</p> <p>There are no listed building or other heritages assets that will be affected by any proposal here or their settings.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                 |                                               |
| EBC Ecology:              | <p><u>Comments 8 May 2024 (following submission of PEA &amp; Shadow HRA):</u></p> <p>I am satisfied that the proposals are appropriate, and the recommendations provided in the PEA and shadow HRA would minimise the potential impacts of a paddle board centre in this location. The use of paper leaflets should be minimised to avoid them becoming litter. It would be preferable to ask customers to read the signs and acknowledge that they have read them. Bird Aware reminders could even be stencilled onto the rental paddle board equipment.</p> <p><u>Comments 19 February 2024:</u></p> <p>This application is for a paddle board centre, not just the installation of containers and decking. The letter from Jim Beavan at Savills (January 2023) notes that this application follows a planning contravention notice in April 2023 for a previous paddle board business with decking and storage container removed at that time. The proposed decking and containers will provide storage space and a covered reception area for customers. What has not been addressed in this application is the ecological effects on the River Hamble from an increase in the number of paddleboarders using an ecologically sensitive area.</p> |                                                 |                                               |

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|                                 | <p>The site is located adjacent to Badnam Copse SINC, Mercury Marina Saltmarsh SINC, the Solent and Southampton Water and Solent and Dorset Coast SPA, Solent Southampton Water Ramsar area and the Solent Maritime SAC which are important for breeding seabirds in Summer and feeding grounds for waterbirds in Winter.</p> <p>Brent Goose and Solent Wader sites E12B, E 11 and E 10 are located to the north of this site, with site E13 to the south and sites F73 and F75 are located on the opposite bank of the river. Additional sites are located further upstream and downstream. To avoid the boat traffic on the River Hamble, paddle boarders utilise the edges. As they don't require deep water, they can access the smaller channels which would disturb birds and other wildlife.</p> <p>In addition to an ecological impact assessment of the location of a paddle board centre in this area and a habitats regulations assessment, biodiversity enhancements are required.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Environment Agency:             | <p><u>Comments 11 April 2024:</u><br/>No objection.</p> <p><u>Comments 5 February 2024:</u><br/>Object.<br/>The application site lies within Flood Zones 2 and 3, which is land defined by the Planning Practice Guidance for the National Planning Policy Framework (NPPF) for Flood Risk and Coastal Change as having a high and medium probability of flooding. The NPPF (paragraph 167, footnote 55) states that an FRA must be submitted when development is proposed in such locations. An FRA is vital to making informed planning decisions. In its absence, the flood risk posed by the development are unknown. This is sufficient reason for refusing planning permission.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| River Hamble Harbour Authority: | <p>RHHA seeks to accommodate the diverse range of craft currently found in the harbour.</p> <p>The development itself sits above mean high water springs and, therefore, outside the jurisdiction of RHHA. This also means that it will not need a separate application for Harbour Works consent. However, the resulting facility will result in additional paddleboarding operations within the navigable waters of the River Hamble, which is within RHHA jurisdiction.</p> <p>The proposed paddle boarding facility sits within the curtilage of an existing marina, which already certifies itself and the risks associated with any operation taking place within its curtilage, to be managed to levels which are 'as low as is reasonably practicable' as defined in the Port Marine Safety Code (PMSC). It should be noted that there is increasing focus on this matter in the current review of the PMSC which places explicit responsibilities upon marine facilities within harbour authorities' jurisdictions. Among the considerations that will be given by the operator to reducing the risks, both those to paddle boarding clients and also those to other river traffic, will be the navigational safety content of the briefing that is given by the operator of this proposed facility. Please advise the applicant/operator that they are most welcome and encouraged to contact the RHHA Harbour Master for advice.</p> <p>The River Hamble is highly designated for nature conservation and EBC would wish to also ensure the operational aspect of this development i.e. potential for recreational disturbance of</p> |

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|                                 | designated habitats and species, is also addressed within its Habitat Regulations Assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Marine Management Organisation: | <p>Please be aware that any works within the Marine area require a licence from the Marine Management Organisation. It is down to the applicant themselves to take the necessary steps to ascertain whether their works will fall below the Mean High Water Springs mark.</p> <p>Marine Licensing: Works activities taking place below the mean high water mark may require a marine licence in accordance with the Marine and Coastal Access Act (MCAA) 2009. Such activities include the construction, alteration or improvement of any works, dredging, or a deposit or removal of a substance or object below the mean high water springs mark or in any tidal river to the extent of the tidal influence. Applicants should be directed to the MMO's online portal to register for an application for marine licence:<br/> <a href="https://www.gov.uk/guidance/make-a-marine-licence-application">https://www.gov.uk/guidance/make-a-marine-licence-application</a></p> <p>The MMO is also the authority responsible for processing and determining Harbour Orders in England, together with granting consent under various local Acts and orders regarding harbours. A wildlife licence is also required for activities that would affect a UK or European protected marine species.</p> <p>Environmental Impact Assessment: With respect to projects that require a marine licence the EIA Directive (codified in Directive 2011/92/EU) is transposed into UK law by the Marine Works (Environmental Impact Assessment) Regulations 2007 (the MWR), as amended. Before a marine licence can be granted for projects that require EIA, MMO must ensure that applications for a marine licence are compliant with the MWR.</p> <p>In cases where a project requires both a marine licence and terrestrial planning permission, both the MWR and The Town and Country Planning (Environmental Impact Assessment) Regulations<br/> <a href="http://www.legislation.gov.uk/uksi/2017/571/contents/made">http://www.legislation.gov.uk/uksi/2017/571/contents/made</a> may be applicable.</p> <p>If this consultation request relates to a project capable of falling within either set of EIA regulations, then it is advised that the applicant submit a request directly to the MMO to ensure any requirements under the MWR are considered adequately at the following link: <a href="https://www.gov.uk/guidance/make-a-marine-licence-application">https://www.gov.uk/guidance/make-a-marine-licence-application</a></p> <p>Marine Planning: Under the Marine and Coastal Access Act 2009 ch.4, 58, public authorities must make decisions in accordance with marine policy documents and if it takes a decision that is against these policies it must state its reasons. MMO as such are responsible for implementing the relevant Marine Plans for their area, through existing regulatory and decision-making processes. Marine plans will inform and guide decision makers on development in marine and coastal areas. Proposals should conform with all relevant policies, taking account of economic, environmental and social considerations. Marine plans are a statutory consideration for public authorities with decision making functions.</p> <p>At its landward extent, a marine plan will apply up to the mean high water springs mark, which includes the tidal extent of any</p> |

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|                  | <p>rivers. As marine plan boundaries extend up to the level of the mean high water spring tides mark, there will be an overlap with terrestrial plans which generally extend to the mean low water springs mark.</p> <p>Planning documents for areas with a coastal influence may wish to make reference to the MMO's licensing requirements and any relevant marine plans to ensure that necessary regulations are adhered to. All public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area must do so in accordance with the Marine and Coastal Access Act and the UK Marine Policy Statement unless relevant considerations indicate otherwise. Local authorities may also wish to refer to our online guidance and the Planning Advisory Service soundness self-assessment checklist.</p> <p>If you require further guidance on the Marine Licencing process, please follow the link <a href="https://www.gov.uk/topic/planning-development/marine-licences">https://www.gov.uk/topic/planning-development/marine-licences</a></p> |
| Natural England: | <p>No comments have been received following the receipt and re-consultation of additional information.</p> <p><u>Comments 11 March 2024:</u><br/>Further information required.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

#### **Policy:**

#### **National Planning Policy Framework**

#### **National Planning Practice Guidance**

#### **Development Plan:**

#### Eastleigh Borough Local Plan 2016-2036

Policies: S1 (delivering sustainable development), S5 (new development in the countryside), S7 (the coast), S8 (historic environment), DM1 (general criteria for new development), DM5 (managing flood risk), DM6 (sustainable surface water management), DM8 (pollution), DM11 (nature conservation), DM12 (heritage assets), DM13 (transport), DM14 (parking), DM20 (boatyard and marina sites on the River Hamble), DM35 (recreational activity on the River Hamble), and HA2 (Mercury Marina and Riverside Camping and Caravan Park).

#### **Supplementary Planning Documents:**

Quality Places; Residential Parking Standards;

|                   |                                     |                                               |
|-------------------|-------------------------------------|-----------------------------------------------|
| <b>Site Visit</b> | <b>Yes</b> <input type="checkbox"/> | <b>No</b> <input checked="" type="checkbox"/> |
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#### **Assessment:**

#### Site & Surroundings

The application site comprises a piece of land located within Mercury Marina. It is located to the immediate west of the River Hamble and boat mooring area. To the immediate south are other associated Marina buildings. The site itself is accessed via Satchell Lane (due south) of the application site.

Further north of the application site are other Marina buildings, to the west is the access track, to the south is the parking area for boats and cars and to the east is the River

Hamble. Further south is the Mercury Holiday Park (also accessed via Satchell Lane). It is also noted that the application site and wider surroundings fall within the countryside.

### Proposal

The application proposes the erection of 2no. containers and installation of decking. Currently there is an area of existing hardstanding where the containers would be positioned. The remaining area would then be decked.

Container A would be situated to the southern part of the application site and would have a footprint of 2.4m by 6.1m, with a height of approx. 2.6m.

Container B would be situated to the eastern part of the site, this would have large glazed panels on the eastern elevation overlooking the River Hamble. This container would have a footprint of approx. 2.8m by 7.3m and a height of 2.6m.

Both containers would be finished in; black paint and wood cladding.

### Principle

The application site falls within designated countryside protected by Policy S5. This Policy sets out that new development in the countryside is generally restricted and notes (1) compatible usages for which new development in the countryside is appropriate and (2) that new development in the countryside *will seek* to avoid adverse impacts upon the intrinsic character of the landscape.

Policy S7 is also of relevance due to the application sites location. This Policy sets out the defined areas (1), which includes the Hamble River estuary between Hamble Point Marina and Botley. This Policy also sets out (2) how to respect the Ramsar designations, and to (c) enable the provision of infrastructure related to sailing within the developed frontages of the river which is expanded upon in Policy DM20.

Policy DM20 is arguably one of the most important Policies as this specifically relates to development at boatyard and marina sites on the River Hamble. This sets out that development associated with boat building and the fitting out, maintenance and repair of boats and ancillary uses, will be permitted, provided that development does not: *(a) jeopardise the safety and ease of navigation on the river, (b) adversely affect nature conservation, landscape or heritage interests, or (c) cause a reduction in water quality.*

Another Policy of relevance is Policy HA2, this specifically relates to Mercury Marina and Riverside Camping and Caravan Park. This sets out that approx. 4.7 hectares of land at/ around Mercury Marina is allocated for a marina, range of holiday accommodation and car parking/ boat storage. Sections a(i)- a(vii) set out what development should be/ provide, section b requires a HRA to demonstrate how development can be delivered without adverse effect on any European site, and c sets out that a modest amount of floorspace not restricted to boat-relates uses could be acceptable, where it is demonstrated that the development will complement the use of the site and/ or the enjoyment of the River Hamble.

The proposals relate to the erection of 2no. containers and installation of decking to facilitate a paddling boarding area. The proposed buildings/ introduction of a new nautical activity is considered to complement the existing marina use. The proposals are therefore considered to be in accordance with the abovementioned policies and would, as a result, be acceptable in principle, but would be subject to the following considerations.

### Design

Policy DM1 of the Eastleigh Borough Local Plan (2016-2036) stipulates that all new development should respect the character and appearance of urban areas, take full and proper account of the context of the site including the character, appearance and land uses of the locality or neighbouring, and be compatible in terms of mass, scale, layout density, design and siting.

The application proposes the erection of 2no. containers and installation of decking. The containers would be of a comparable size to the existing built development (within a close proximity), and would therefore not appear at odds when read within this context.

The proposals would result in further development within the Marina complex, and due to the siting of the containers, it is likely that wider views of the proposals could be obtained. However, and given the existing surroundings; mooring boats and buildings, the proposals, given their overall dimensions (single storey nature) and appearance, are not considered to be adversely harmful.

Further, it is also noted that the Old Bursledon Conservation Area is located to the north of the site. Policy DM12 of the Eastleigh Borough Local Plan (2016-2036) stipulates that development of a heritage asset would only be permitted where the proposals do not harm or detract from the significance or special interest of the asset. As the proposals fall outside the Conservation Area this Policy criteria is not specifically relevant. However, due to the close proximity of the Conservation Area the Council's Conservation Officer was consulted, whereby they raised no objection. As such, it would be concluded that the proposals would not have an adverse impact upon the setting of the nearby Old Bursledon Conservation Area.

Therefore and to conclude, the proposals are considered to be in accordance with Policy DM1.

#### Impact upon Neighbouring Amenities

Policy DM1 of the Eastleigh Borough Local Plan (2016-2036) amongst other matters, stipulates that all new development should not have an unacceptable impact upon residential amenities of both new and existing residents.

As a result of the nature of the proposals, it is likely that this could increase comings and goings to the site. However, it should be acknowledged that the site is an existing and operating marina with associated uses and therefore comings and goings are likely to be frequent already. Further and due to the location and siting of the proposals, no residential amenities would be impacted. The immediate surroundings comprise existing boatyard buildings and activities. As a result of this, these immediate amenities are unlikely to be adversely impacted upon. As such, the proposals are considered to be acceptable in this regard.

#### Highway Safety & Parking

Policy DM14 of the Eastleigh Borough Local Plan (2016-2036) requires residential development to provide off-highway parking which is adequate in terms of highway safety / traffic management. The Residential Parking SPD sets out the relevant parking provisions for dwellinghouses, which are dependent upon the amount of bedrooms.

The proposals relate to the erection of 2no. containers and installation of decking to facilitate a paddling boarding area. Given the introduction of this new use, it is likely that this would increase the amount of users of the site, thus in turn could increase parking requirements. It is noted that there is a sufficient car parking area which is likely to be able to accommodate any potential increase in parking generated as a result of the proposals. The proposals are therefore considered to be acceptable in this regard.

## Ecology

Policy DM11 of the Eastleigh Borough Local Plan (2016-2036) stipulates that the Borough Council will work with statutory and voluntary agencies and developers to; protect, conserve and enhance areas subject to international, national and local nature conservation designations, and promote the net gain of biodiversity on all sites through the protection, enhancement and connection of existing provisions and new habitats and features compatible with the native biodiversity characteristics of the Borough.

The Council's Ecologist reviewed the application and supporting documents and made comments specifically relating to the environmental impact. The proposals are therefore considered to be appropriate with regard to ecology, subject to biodiversity enhancements. The environmental impact will be considered later within this report.

## Flood Risk

Policy DM5 of the Eastleigh Borough Local Plan (2016-2036) states that development will only be permitted within the areas at risk of flooding providing that certain criteria are met, comprising; sequential tests (where required), site specific flood risk assessment, incorporation of flood protection, resilience and resistance measures, and site drainage systems which are designed taking account of events which exceed normal standards.

The Town and Country Planning (Development Management Procedure) (England) Order 2015 states there is no requirement to consult the Environment Agency for minor development within Flood Zone 2 or 3, however, paragraph 173 of the National Planning Policy Framework (NPPF) (2023) states all applications should be supported by a site-specific flood-risk assessment.

Originally the application was not supported by any Flood Risk Assessment (FRA), whereby the Environment Agency (EA) raised an objection. Following this, the agent submitted an FRA (22 March 2024).

This FRA covered that the proposals are classified as 'water compatible' development (being 'water-based recreation'), as set out within the flood risk vulnerability classification of the National Planning Practice Guidance. With regard to the flood risk vulnerability and flood zone compatibility set out in Table 3 of the National Planning Practice Guidance, this type of development located in Flood Zones 2 and 3 does not require an exception test, and is considered compatible.

The FRA stated that "it is an operational requirement for the Paddleboard Centre to be located within a flood risk zone given the necessity for a waterside location". This FRA concluded that the proposals are minor and would not serve to increase flood risk elsewhere. Further, and following re-consultation EA raised no objection. As such, the proposals are considered to be acceptable in this regard.

## Habitats Regulations Assessment

Following the Council's Ecologist, RHHA and Natural England's comments, a HRA was submitted.

The HRA noted that there were potential adverse impacts that the proposal could have upon the European Protected Solent through; water quality/ hydrology from contaminants, and disturbance to breeding and wintering birds, during the construction phase. As well as disturbance to birds during operation with paddle boarders using the River Hamble.

The application has been supported by a Shadow Habitats Regulations Assessment (sHRA) (Ecosupport, May 2024) and a Preliminary Ecological Appraisal (Ecosupport, May 2024). As set out within the Council's HRA a Construction Environmental Management

Plan (CEMP) covering; land activities, construction methods, timings and noise mitigation measures etc. will be secured via condition. As well as the construction phase having an impact upon the protected areas, the operation of the proposals has the opportunity to impact the surroundings. The applicants sHRA covered mitigation measures to ensure there would be no adverse harm arising from the operation of the proposals. Subject to conditioning these measures the proposals are considered to be acceptable.

The Council's Ecologist has reviewed the additional submitted information and is satisfied that the proposals are appropriate and the recommendations provided in the PEA and sHRA would minimise the potential impacts of a paddle board centre in this location. Natural England has been furnished with this information, however has not provided any response. Ultimately, the LPA are satisfied that the proposals would not result in an adverse impact upon the protected site, subject to conditions.

#### Other Matters

In accordance with The Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the Local Planning Authority informed the agent of the pre-commencement conditions to which they confirmed they were agreeable (email dated 13 June 2024).

#### **Equalities Act:**

Section 149 of the Equalities Act 2021 created the public sector equality duty. Section 149 states:

- A public authority must, in the exercise of its functions, have due regard to the need to:
  - a. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

When making policy decisions, the Council must take account of the equality duty and in particular any potential impact on protected groups. It is considered that this application does not raise any equality implications.

#### **Climate Change:**

In July 2019, the Council declared a Climate Change and Environmental Emergency. In doing so it agreed, among other things, to: (a) put in place measures to ensure the Council's own operations and functions achieve carbon neutrality by 2025; (b) work with partners to aim for all projects and services delivered in the Borough to achieve carbon neutrality by 2030; (c) ensure that the Council's procurement policy recognises carbon neutrality as one of its primary considerations; and (d) recognise the urgency of action to mitigate and adapt to climate change in every decision taken by the Council. This is underpinned by the Climate and Environment Emergency Strategy 2020-2030 and the supporting Climate and Environmental Emergency Action Plan – Update June 2020.

The declaration of the Climate Change and Environmental Emergency demonstrates a strong commitment from the Council to achieve net zero. The NPPF and development plan do not set this as a specific target, but it is a material consideration to be considered alongside all other material considerations. In any case addressing climate change is a core part of the NPPF and Local Plan policy. The need to support the economy is part of the Strategic Environmental Assessment for the Local Plan, as is an assessment of climate impacts.

The NPPF aims for the need for housing to be met, and Policy S2 of the Local Plan sets a target for 14,580 dwellings to be provided by 2036. The NPPF and Policies, S1, DM2, and DM3 of the Local Plan and energy and water elements of the adopted Environmentally Sustainable Development SPD require development to be sustainable in terms of resource use, climate change and energy use. When considering the impact of climate change, the proposed development is expected to be resilient to the potential effects of climate change and is expected to limit impacts on climate emissions as a result of the development or its use.

**Conclusion:**

This application is recommended for approval, subject to conditions.

Recommendation:

**PERMIT** ☒

**REFUSE** ☐