



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
15 JULY 2019**

Application Number	FUL/MAL/19/00382
Location	Club Nautico Bridgemarsh Marine Bridgemarsh Lane Althorne Essex
Proposal	Section 73A application for extension and alterations to barge S.S. Nautica and for the change of the use on the upper deck from office to club house with associated facilities (resubmission of application FUL/MAL/17/01376).
Applicant	Mr John Wilsdon
Agent	Mr Mark Morgan - Petro Designs Ltd
Target Decision Date	20.06.2019 E.o.T. 19.07.2019
Case Officer	Spyros Mouratidis
Parish	ALTHORNE
Reason for Referral to the Committee / Council	Member Call In – Councillor Mark G Bassenger – Concerns about the application

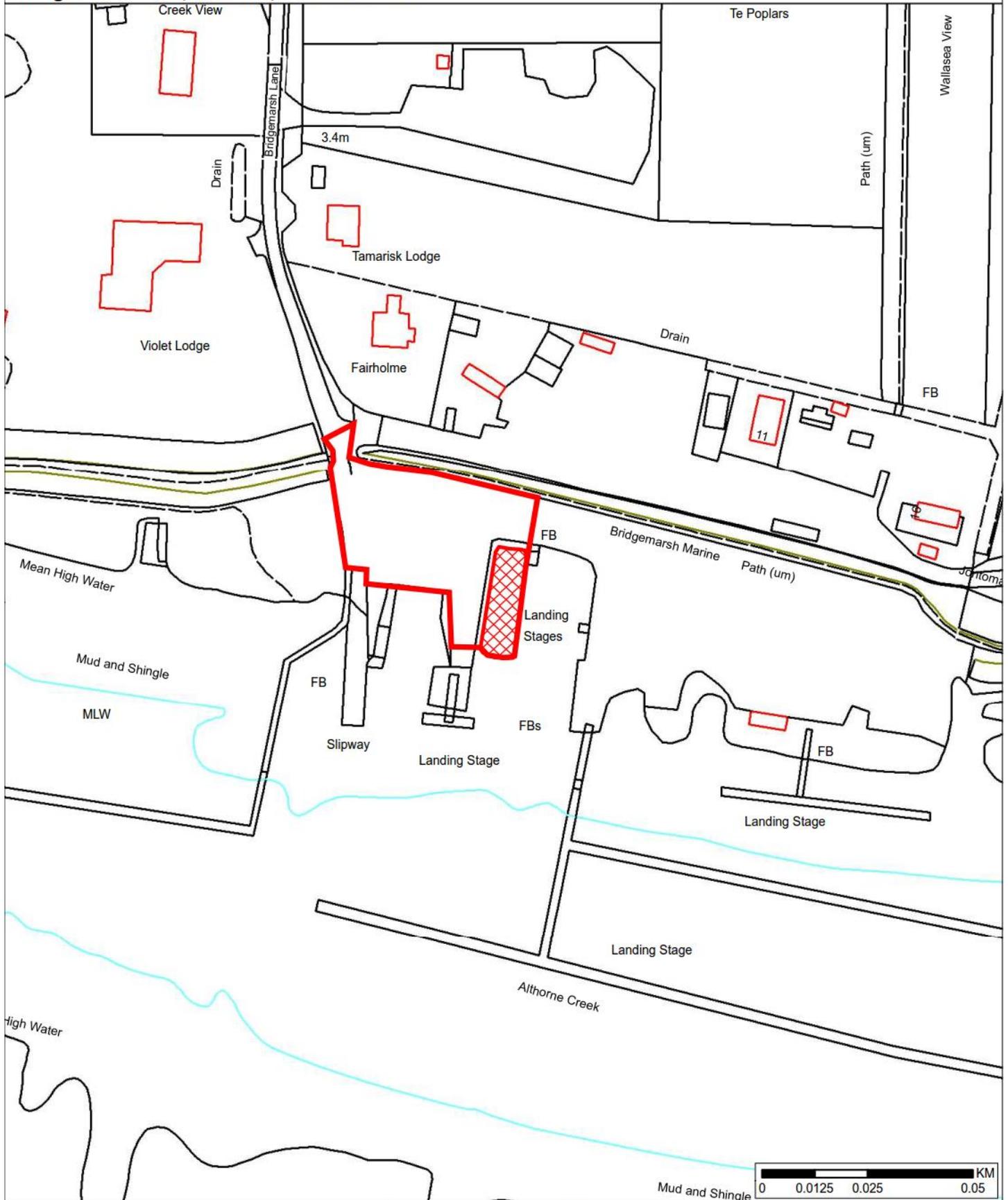
1. **RECOMMENDATION**

APPROVE subject to the conditions (as detailed in Section 8 of this report).

2. **SITE MAP**

Please see overleaf.

19/00382/FUL - Club Nautico, Bridgemarsh Marina
Bridgemarsh Lane, Althorne, Essex CM3 6DQ



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 Maldon District Council 100018588 2014


MALDON DISTRICT COUNCIL

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Scale:	1:1,250
Organisation:	Maldon District Council
Department:	Department
Comments:	SE Area Committee
Date:	18/06/2019
MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 The application site is part of the Bridgemarsh Marina, an established marina located at the southern end of Bridgemarsh Lane in Althorne, on the northern bank of the River Crouch. The site, measuring approximately 1,400m² (0.14ha) lies to the south of the sea wall, outside of any development boundary, within a flood risk zone. The site is partially within and/or partially adjacent to designated Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Special Area of Conservation (SAC), Marine Conservation Zone (MCZ) and wetland protected by the Ramsar Convention. Part of the site is within the marshes of the river and is covered by water on high tide. The site is occupied by a barge and ramps leading to floating docks, jetties and other boats.
- 3.1.2 To the north of the site there is the sea wall with the public footpath on top. To the east are the repair and storage areas for the marina and a parking area. To the south are the floating docks of the marina. Farther north is the access to the marina area from Bridgemarsh Lane, two residential properties, Violet Lodge and Fairholme, the offices of the marina and a caravan site with a utility block. Fairholme is where the owner of the land resides. There are more dwellings along Bridgemash Lane.

The development

- 3.1.3 Planning permission is sought for the extension and alterations to the barge S.S. Nautica and the change of the use of the barge from office to a club house with associated facilities. The operational development has already been carried out with the exception of some elements. Therefore, the application is retrospective in nature and has been submitted under the provisions of Section 73A of the Town and Country Planning Act 1990 as amended (the "1990 Act"). The application is a resubmission with alterations of the refused application FUL/MAL/17/01376 (the "2017 Application").
- 3.1.4 The extension of the barge is to the northern part of the upper deck and accommodates an enlargement to the kitchen area. The extension measures 4.9m wide by 2.9m deep and is constructed of timber weatherboarding. A window has been installed to either side of the extension. The front elevation accommodates a window, a door to give access to the lower deck and a door to give access to an area at the upper deck. Above the extension and the kitchen area, there was an additional storey which was removed following the issue of an enforcement notice and the subsequent dismissal of the relevant appeal. This has now been replaced with a dual-pitched roof covered in corrugated iron sheets. The roof covers an area of 30.6m² and measures 3.5m above the deck of the barge.
- 3.1.5 It is proposed to erect two additional masts measuring 5.3m and 7.2m above the upper deck level of the barge. Permission is also sought for an existing mast measuring 10m. On the existing mast there is floodlighting installed for the illumination of the deck. Moreover, the application seeks to regularise the weatherboarding of the external walls of the upper deck, the removal of the external wall to the southern part of the upper deck and the installation of powder coated bi-fold doors to the south elevation of the remaining structure.

3.1.6 Finally planning permission is sought for the use of the barge as a club house. It has been specified that the use is proposed to be seasonal. The use was carried out. There was provision of food, drinks and seating areas on and around the barge. However, at the time when the case officer visited the site the use it was not taking place. Whilst the kitchen facilities were still on site, the bar and most of the seating facilities had been removed.

Relevant background information

3.1.7 As stated this application is a resubmission of the 2017 Application. Clarification has been provided that the use sought to be regularised is of a club house for members only who either have a boat or a caravan in the marina site. Prior to the determination of the 2017 Application the Local Planning Authority (LPA) had taken enforcement action against the identified breaches of planning control with the service of Enforcement Notice ENF/16/00228/01 (the “Notice”) and the Breach of Condition Notice BCN/16/00228/02 (the “BCN”).

3.1.8 The Notice was issued for the following reasons:

1. *The unauthorised development due to its style, design, scale and pallet of materials has resulted in a conspicuous and inappropriate development which detracts from and causes detrimental harm on the character and appearance of the coastal area. The development is, therefore, contrary to policies S1, S8 and D1 of the Local Development Plan and the guidance contained within the National Planning Policy Framework.*
2. *The failure to comply with Condition 3 of planning permission 94/00180/FUL has resulted in a development that is harmful to the amenity of the neighbouring residents and the natural environment and has the potential to cause additional harm. Therefore, the breach of the condition has resulted in a development which is contrary to policies D1 and D2 of the Local Development Plan and advice contained within the National Planning Policy Framework.*

3.1.9 The Notice required the removal of the structure installed above the upper deck of the barge and the cessation of the unauthorised use. The Applicant lodged an appeal (ref: APP/X1545/C/17/3191676 – the “Appeal”) against the LPA’s decision to issue the Notice. The Appeal was determined on 4 June 2018. The Inspector who dealt with the Appeal agreed with the LPA about the harm caused by the structure above the upper deck. The Inspector also agreed that the impact on the environment could be detrimental and at the time there was no sufficient information to suggest otherwise. However, the Inspector in determining the Appeal stated that subject to appropriate conditions the use would not cause adverse harm to the living conditions of neighbouring occupiers. This is a material planning consideration of significant weight.

3.1.10 Following the determination of the Appeal the 2017 Application was refused for the following reason:

1. *The unauthorised use has a potential significant impact upon the designated areas adjacent to the application site. The Applicant has not submitted sufficient*

information to allow the Local Planning Authority to complete a Habitats Regulations Assessment to demonstrate that the use has no significant impact or the significant impact can be mitigated or compensated in a satisfactory way. Therefore, the development is contrary to policies D2 and N2 of the approved Local Development Plan and national planning policy contained within the National Planning Policy Framework.

3.1.11 The previous decision of the Council is a material planning consideration of significant weight. The basic difference between the 2017 Application and the current application is that the use is proposed to be seasonal. This is considered to be directly relevant to the reason for refusal of the 2017 Application. It should be noted that this application would not automatically regularise the breaches of planning control on site.

3.2 Conclusion

3.2.1 It is considered that the current scheme has addressed the previous reason for refusal. Subject to conditions, the development is not considered to be detrimentally harmful to the character and appearance of the area, the living conditions of neighbouring occupiers, the highway safety, the natural environment and the safety of users from flood risk in line with local policies S1, S7, S8, D1, D2, D5, E5, N2, T1 and T2 of the Approved Maldon District Local Development Plan (MDLDP), national policies of the National Planning Policy Framework (NPPF), local guidance as contained within the Maldon District Design Guide (MDDG) (2017) Supplementary Planning Document, the Maldon District Vehicle Parking Standards Supplementary Planning Document and the Althorne Village Design Statement, and national guidance contained within the Planning Practice Guidance.

4. MAIN RELEVANT POLICIES

Members' attention is drawn to the list of background papers attached to the agenda.

4.1 National Planning Policy Framework (NPPF) 2019 including paragraphs:

- 2-14 Achieving sustainable development
- 38 Decision-making
- 47 – 50 Determining applications
- 54 – 57 Planning conditions and obligations
- 80 – 84 Building a strong, competitive economy
- 102 – 111 Promoting sustainable transport
- 128 – 132 Achieving well-designed places
- 148 – 169 Meeting the challenge of climate change, flooding and coastal change
- 170 - 183 Conserving and enhancing the natural environment

4.2 Maldon District Local Development Plan (LDP) 2014 – 2029 approved by the Secretary of State:

- S1 Sustainable Development

- S7 Prosperous Rural Communities
- S8 Settlement Boundaries and the Countryside
- D1 Design Quality and Built Environment
- D2 Climate Change & Environmental Impact of New Development
- D5 Flood Risk and Coastal Management
- E5 Tourism
- N2 Natural Environment, Geodiversity and Biodiversity
- T1 Sustainable Transport
- T2 Accessibility

4.3 Relevant Planning Guidance / Documents:

- Planning Practice Guidance (PPG)
- Maldon District Design Guide (MDDG) SPD
- Maldon District Vehicle Parking Standards (VPS) SPD
- Althorne Village Design Statement (VDS)

5. MAIN CONSIDERATIONS

5.1 Principle of Development

- 5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004, Section 70(2) of the 1990 Act and paragraph 47 of the NPPF require that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan comprises of the approved LDP.
- 5.1.2 The application site lies outside of any defined development boundary where policies of restriction apply. Policies S1 and S8 of the approved LDP seek to support sustainable development within the defined settlement boundaries. It is clearly stated that outside of the defined settlement boundaries, Garden Suburbs and Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided the development is in line with other policies of the LDP. Rural tourism in line with policy E5 of the LDP is not discouraged in the countryside.
- 5.1.3 It should be noted that the structure (the barge) has already been on site for more than twenty years and was brought on the land to be used as an office in connection with the use of the marina. The NPPF encourages LPAs to promote a strong rural economy through, among others, sustainable rural tourism and leisure developments which respect the character of the countryside. Furthermore, the NPPF urges LPAs to support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through the conversion of existing buildings and well-designed new buildings.
- 5.1.4 Policy S7 of the LDP states that the Council will actively seek to support and facilitate sustainable economic development within the villages through the support

and enhancement of rural tourism in accordance with policy E5. Policy E5 of the approved LDP states that:

“The Council will support developments which contribute positively to the growth of local tourism in a sustainable manner and realise opportunities that arise from the District’s landscape, heritage and built environment.

Development for new tourist attractions, facilities and accommodation will be supported across the District where it can be demonstrated that:

- 1) There is an identified need for the provision proposed;*
- 2) Where possible, there are good connections with other tourist destinations, the green infrastructure network and local services, preferably by walking, cycling or other sustainable modes of transport;*
- 3) There will not be any significant detrimental impact on the character, appearance of the area and the quality of life of local people; and*
- 4) Any adverse impact on the natural and historic environment should be avoided wherever possible. Where an adverse impact is unavoidable, the proposal should clearly indicate how the adverse impacts will be effectively mitigated to the satisfaction of the Council and relevant statutory agencies. Where a development is deemed relevant to internationally designated sites, the Council will need to be satisfied that a project level HRA has been undertaken and that no potential significant adverse impact has been identified.”*

- 5.1.5 With regard to criterion (1), the Applicant has confirmed that the use will be associated and connected to the activities of the marina. The Applicant stated in the access and design statement that there are 50 people living on the marina. Although, it is unclear where these 50 people live and whether this activity is authorised (please note that an appeal has been lodged against the Council’s enforcement notice ENF/17/00159/03 against the unauthorised residential use of caravans), it is noted that there are more than 100 boats, three (3) lawful residential caravans, up to seven (7) holiday unit and one (1) holiday house boat. Furthermore, the use is already taking place which indicates and from the log book it appears that the facilities have been used which shows that there is some need for such facilities in the area. In addition, it is not uncommon for marinas to offer such facilities in their premises.
- 5.1.6 Criterion (2) is partially met as the application site is at walking distance from Althorne train station which gives access to Southminster, Burnham-on-Crouch and South Woodham Ferrers. Also, the established marina use is a tourism related activity. Furthermore, the public footpath on top of the sea wall provides access to a number of footpaths connecting the site with nearby settlements. Therefore, the development is not considered to be in conflict with criterion (2).
- 5.1.7 With regard to criterion (3), the development if it were to remain uncontrolled, it would fail to meet this as there will be significant detrimental impact upon the character and appearance of the area and the amenity of neighbouring occupiers. However, appropriately worded planning conditions could alleviate the identified and potential harm. On this basis, this criterion would be met subject to conditions. These considerations will be further discussed in the relevant sections of the report.
- 5.1.8 Criterion (4) seeks to avoid any potential significant adverse impact to the natural environment. While this matter will be explored further in the following sections of

the report and a separate HRA will be conducted, Natural England (NE) has advised that, from the available evidence, the use has a potential significant impact. However, as the use is now proposed to be seasonal, subject to conditions, this potential significant impact could be mitigated or alleviated to a degree that would not be adversely harmful to the surrounding natural environment and the integrity of the designated sites. Hence, this criterion would also be met.

- 5.1.9 The planning history is a material planning consideration and it is pertinent to be considered in order to establish the principle of the development. As explained in paragraphs 3.1.6 to 3.1.10, the reason for the LPA refusing the 2017 Application related to the impact of the development to the sensitive natural environment. It has been briefly explained in the previous paragraphs that this harm is considered to have been addressed. Hence, the refusal of the 2017 Application does not negatively affect the principle of the development.
- 5.1.10 Bearing in mind the above analysis, it is considered that the principle of the development is acceptable. Other material planning considerations are discussed in the following sections of the report.

5.2 Design and Impact on the Character of the Area

- 5.2.1 The planning system promotes high quality development through good inclusive design and layout, and the creation of safe, sustainable, liveable and mixed communities. Good design should be indivisible from good planning. Recognised principles of good design seek to create a high quality built environment for all types of development.
- 5.2.2 It should be noted that good design is fundamental to high quality new development and its importance is reflected in the NPPF. The NPPF states that:

“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.

“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development”.

- 5.2.3 This principle has been reflected in the approved LDP. The basis of policy D1 of the approved LDP seeks to ensure that all development will respect and enhance the character and local context and make a positive contribution in terms of:-
- a) Architectural style, use of materials, detailed design features and construction methods. Innovative design and construction solutions will be considered where appropriate;
 - b) Height, size, scale, form, massing and proportion;
 - c) Landscape setting, townscape setting and skylines;

- d) Layout, orientation, and density;
 - e) Historic environment particularly in relation to designated and non-designated heritage assets;
 - f) Natural environment particularly in relation to designated and non-designated sites of biodiversity / geodiversity value; and
 - g) Energy and resource efficiency.
- 5.2.4 Similar support for high quality design and the appropriate layout, scale and detailing of development is found within the MDDG. The Althorne VDS seeks the visual impact of development to respect the character of the area.
- 5.2.5 It has already been mentioned that the application site lies outside of any defined development boundary. According to policies S1 and S8 of the LDP, the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. The policies stipulate that outside of the defined settlement boundaries, the Garden Suburbs and the Strategic Allocations, planning permission for development will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon and provided the development is for proposals that are in compliance with policies within the LDP, neighbourhood plans and other local planning guidance.
- 5.2.6 The external alterations that have already been carried out and those that are proposed would result in a single storey structure on top of a barge with weatherboarded walls and a metallic roof. While the design of the scheme is not of significant architectural merit, the visual impact upon the character and appearance of the area is not considered to be detrimental to such a degree as to warrant the refusal of the application for this reason. It should be noted that the Inspector who considered the recent Appeal on site did not raise any grave concerns about the use of the materials on the external surfaces of the barge. The main criticism was about the “bridge” structure which has subsequently been removed. The barge is visible to public view points from the river and the adjacent public footpath and its prominence increases when the high tide lifts the structure. However, the scale and proportions of the structure would be comparable to the original form of the barge and would be in keeping with the maritime vernacular.
- 5.2.7 The already erected mast and the proposed masts will be of significant height, but their character is compatible with a marina environment. The installed external lighting is harmful to the character and appearance of the countryside. Nevertheless, a condition to prohibit any external lighting would meet the six tests if the application will be approved. During the site visit it was noted that there was external seating area available away from the barge. The insertion of paraphernalia to the land has the potential to harm the character and appearance of the area. A condition to limit the storage of associated items and a condition to limit the available seating facilities out of the barge would pass the six tests.
- 5.2.8 As part of the consultation, it has been raised that the waste collection arrangements are not clear. Indeed, in the application form no details are given about the waste storage and collection. Poor storage of waste could result in detrimental impact on the character and appearance of the area. It would be pertinent to know where the waste generated from the use will be stored and how it will be disposed of. Details of these arrangements could be requested via a condition which would meet the six tests.

5.2.9 Subject to conditions, the impact of the development on the character and appearance of the area is considered acceptable. This view was taken previously by the Council when the 2017 Application was determined.

5.3 Impact on Residential Amenity

5.3.1 The basis of policy D1 of the approved LDP seeks to ensure that development will protect the amenity of its surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight. This is supported by section C07 of the MDDG. Similarly, policy D2 of the approved LDP requires all development to minimize all forms of possible pollution including air, land, water, odour, noise and light. Any detrimental impacts and potential risks to the human and natural environment will need to be adequately addressed by appropriate avoidance, alleviation and mitigation measures.

5.3.2 The external alterations to the structure, coupled with the distance from neighbouring properties, have not given rise to any issues regarding overlooking, overshadowing or overpowering the neighbouring residential properties. On the other hand, it is evident from representations made by the Council's Environmental Health team, the local residents and the consultation response of the parish council that there have been incidents of noise and disturbance giving rise to complaints. Those complaints have arisen despite a members' book being kept on the bar where members sign in and register their guests.

5.3.3 In the words of the Inspector who dealt with the Appeal,

“The barge is in a tranquil rural setting where there is low ambient noise. Even though improvements may have been undertaken during the renovation, the barge will not by its very nature be well insulated to avoid noise emissions. With seating also on deck, there is clearly scope for noise to cause disturbance to residents. That is especially so late evening when the environment may be quietest with less activity and local residents may have greater expectation of peace and quiet. Below deck there is an area laid out to cater for functions with a small stage and amplifier equipment. Amplified sound will clearly magnify noise levels increasing the prospect of disturbance.”

5.3.4 It should be noted that the Applicant stated the lower deck has now been flooded but it is intended for repairs to be carried out, so this area could be in use again. The submitted plans show this area as part of the use. The Inspector dealing with the Appeal continues:

“Furthermore, the facilities available on the barge will attract more comings and goings along the narrow, unlit lane and in the parking area with scope for disturbance to be caused. That is particularly so when functions are held. [...] If uncontrolled and unrestricted, the operation of a bar and restaurant will almost certainly present adverse consequences from noise and traffic generation. [...] planning conditions are capable of being imposed to restrict hours of operation and numbers. Control over the noise levels including amplified sound and use of external areas could also be achieved by condition. In that way, noise and disturbance from both the venue and traffic movements can be kept at reasonable levels.

Subject to the imposition of conditions, I find no material adverse effect on the living conditions of residents in terms of noise and disturbance to cause conflict with LDP Policy D1 insofar as it seeks to protect the amenity of surrounding areas taking into account matters including noise. Nor do I find conflict with Paragraph 17 of the Framework which, amongst other things, seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.”

- 5.3.5 It is clear that when the Inspector dealt with the Appeal, she recognised that despite the potential adverse harm arising from an unrestricted use, planning conditions could mitigate or alleviate the identified harm. These conditions would be in relation to hours of operations, number of visitors, amplified sound and external seating. In addition to these, a condition about external lighting would also protect the amenity of neighbouring occupiers.
- 5.3.6 It should be noted that in the current application form there are no hours of operation suggested. However, in the 2017 Application it was suggested the use to operate from midday until eight in the evening. The Council’s Environmental Health team has raised no objections to these hours. These conditions would pass the six tests. Subject to the imposition of conditions, there would be no materially adverse effect on the residential amenity of neighbouring occupiers in terms of noise and disturbance. This is also the position that the Council took when determined the 2017 Application.

5.4 Access, Parking and Highway Safety

- 5.4.1 Policy T1 of the approved LDP seeks to create additional sustainable transport opportunities. Policy T2 aims to create and maintain an accessible environment, requiring development proposals, inter alia, to provide sufficient parking facilities having regard to the Council’s adopted parking standards. Similarly, policy D1 of the approved LDP seeks to include safe and secure vehicle and cycle parking having regard to the Council’s adopted parking standards and maximise connectivity within the development and to the surrounding areas including the provision of high quality and safe pedestrian, cycle and, where appropriate, horse riding routes.
- 5.4.2 The Council’s adopted VPS contains the parking standards which are expressed as minimum standards. This takes into account Government guidance which recognises that car usage will not be reduced by arbitrarily restricting off street parking spaces. Therefore, whilst the Council maintains an emphasis of promoting sustainable modes of transport and widening the choice, it is recognised that the Maldon District is predominantly rural in nature and there is a higher than average car ownership. Therefore, the minimum parking standards seek to reduce the negative impact unplanned on-street parking can have on the townscape and safety and take into account the availability of public transport and residents’ reliance on the car for accessing, employment, everyday services and leisure. The key objective of the standards is to help create functional developments, whilst maximising opportunities for use of sustainable modes of transport. This will enable people to sustainably and easily carry out their daily travel requirements without an unacceptable detrimental impact on the local road network, or the visual appearance of the development, from excessive and inconsiderate on street parking.

5.4.3 The development has not altered the access arrangements to the application site. The parking arrangements have also remained unaltered from the development. Whilst the use has the potential to attract more vehicles on site, given that it is proposed to use the barge as a club, with the facilities available to members, associate members and their guests, this increase in traffic is not considered to be detrimental to the highway safety of the adjacent network. The Highways Authority has been consulted and raised no objection to the application subject to a condition to request the public footpath to be kept clear. While the adjacent highway is unmade, narrow and unlit lane, the traffic generation from the development, subject to conditions to limit the hours of operations and the number of visitors, will not be detrimental to the highway safety. The additional parking is not considered to be so great that would require the full parking standard and can be accommodated on the hard surfaced areas of the application site and the adjacent areas of the marina which are under the same ownership.

5.5 Flood Risk

5.5.1 The application site lies within a Flood Zone 3, the higher probability zone. As such there was a need to submit a Flood Risk Assessment. By nature, a barge can float during the high tide or during a flood event. Although at the moment it is stated that the barge has a leak and does not float, it is the Applicant's intention to rectify this situation. The Environment Agency has been consulted for the application and consider the use to be water compatible. According to table 3 of the PPG regarding flood risk vulnerability and flood zone 'compatibility', water compatible use is suitable to be located within a flood zone 3. It is considered that the development has not increased the risk of flooding as the barge was already used for other purposes and it is by nature flood resilient.

5.5.2 Irrespective of whether a use is water compatible or not, the LPA is required to consider the sequential test as stated within the NPPF. Namely, the LPA is required to consider if there are any other available sites within a lower flood risk zone for the development. It should be noted that the structure is proposed to be used primarily to serve the other uses within the vicinity of the site, particularly those that are within the control of the applicant. The structure therefore needs to be located within the vicinity of the marina in order to serve its catchment area. Furthermore, as the proposal is for the use of a barge that is already at the site rather than a new development, it is considered that it would be illogical to require the development to be undertaken in a different location. In the vicinity of the marina there are no other sites available within a lower flood risk zone. As such the development is considered to pass the sequential test.

5.6 Ecology and impact on the natural environment

5.6.1 As already mentioned, the application site lies partially adjacent to and partially within nationally and internationally designated nature reserve sites. These designations include the Crouch and Roach Estuaries Ramsar site, SPA and SSSI, and the Essex Estuaries SAC and MCZ. The UK is bound by the terms of the Birds and Habitats Directives. They require appropriate steps to be taken to avoid the deterioration of natural habitats and species habitats as well as disturbance of the species for which the areas have been designated. The obligations are transposed into English law in The Conservation of Habitats and Species Regulations 2017 (the

“CHSR”). If the LPA is considering granting planning permission in relation to any development likely to affect a designated site of conservation of nature, Section 63 of the CHSR require that the LPA has to carry out an appropriate assessment (also known as a HRA) to fully consider the impact of the development to the designated site. The Applicant has to provide sufficient information to the LPA to allow them to carry out the HRA. A separate report for the HRA has been prepared. This section contains a summary of the HRA for the development.

- 5.6.2 Paragraph 180 of the NPPF states that in order to prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on the natural environment and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Paragraph 170 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by, among others, preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.
- 5.6.3 Policy N2 states that any development which could have an adverse effect on sites with designated features, priority habitats and / or protected or priority species, either individually or cumulatively, will require an assessment as required by the relevant legislation or national planning guidance. Where any potential adverse effects to the conservation value or biodiversity value of designated sites are identified, the proposal will not normally be permitted. It also states that wherever possible, all development proposals should incorporate ecologically sensitive design and features, providing ecological enhancements and preventing pollution.
- 5.6.4 Policy D2 seeks all development to minimise its impact on the environment by incorporating measures to minimise all forms of possible pollution including air, land, water, odour, noise and light. Any detrimental impacts and potential risks to the natural environment will need to be adequately addressed by appropriate avoidance, alleviation and mitigation measures.
- 5.6.5 In this instance the Applicant has provided a letter from a Senior Ecologist at EECOS in addition to the information provided for the 2017 Application. The LPA has also consulted NE, as a statutory consultee, and other non-statutory consultees, such as the Essex Wildlife Trust. The letter from EECOS highlights the changes to the scheme and states that any impact from the development would be localised. NE has raised concerns about a number of issues such as the foul water discharge, the external lighting and the amplified music, but suggested that on the basis of a seasonal use, these matters can be addressed by conditions.
- 5.6.6 In summary, the HRA concludes that due to the proximity of the site and the nature of the development there is a Likely Significant Effect (LSE). The assessment for a LSE is the first stage of the HRA. As there is a LSE, the competent authority is required to carry out an Appropriate Assessment (AA). The AA examines whether the project on its own or cumulatively affects the integrity of the designated site (Integrity Test). The HRA states that the use and works as proposed adversely affect the integrity of the protected sites. The third stage of the HRA is the consideration of Alternative Solutions. NE has advised that conditions to ensure the seasonal use, to limit amplified noise and external lighting and to provide appropriate foul water drainage

solutions would be sufficient to render the development acceptable and safeguard the integrity of the protected sites. As Alternative Solutions can minimize the impact of the development there is no reason to consider the fourth stage of the HRA regarding reasons to override the public interest or any compensatory measures. This outcome is compliant with planning policy, too. The proposed conditions, if appropriately worded, would meet the six tests of the NPPF.

- 5.6.7 It is noted that for the 2017 Application, the LPA and NE considered that Applicant had not provided sufficient information to enable the HRA and that the nature of the use had the potential to cause significant adverse impact to the designated sites. As the Applicant has applied for the use to be seasonal and on the basis of the additional information provided in the letter from EECOS, this burden has been discharged.
- 5.6.8 It should also be noted that with regard to a condition about the foul water drainage arrangements, the application form states that the foul water is directed to a septic tank. These arrangements may have been acceptable when planning permission was granted for the use of the barge as an office. However, the increased use of the barge, will result in increased outputs of foul water. Moreover, using a septic tank contradicts the national guidance for the treatment of foul water. A condition to request an appropriate foul water drainage scheme would meet the six tests.

5.7 Sustainability and planning balance

- 5.7.1 One of the key priorities within the NPPF is the provision of sustainable development. This requires any development to be considered against the three dimensions within the definition of ‘sustainable development’ providing for an economic, social and environmental objective as set out in the NPPF. The development is considered to contribute positively to the economic and social objectives of the sustainable development. The economic benefits relate to the enhancement of tourism in the area. The social benefits arise from the provision of facilities in an area where such facilities are limited. There are some disbenefits in relation to the environmental objective which relate to the increased foul water discharge, potential noise pollution and potential light pollution. However, these disbenefits can be limited with appropriate conditions as discussed in the relevant sections.
- 5.7.2 Overall, it is considered that the disbenefits and the potential harm arising from the development, if appropriately controlled with conditions, would not outweigh its benefits and the development is considered to be sustainable. Furthermore, the development is in line with policies S1, S7, S8, E5, D1, D2, D5, T1, T2 and N2 of the approved LDP. Given that planning applications should be determined in accordance with the approved LDP unless material considerations indicate otherwise, this application should be approved as there are no material planning considerations to indicate that the development should not be granted planning permission subject to conditions.

5.8 Other matters

- 5.8.1 It should be noted that legal action has been instigated by the LPA against the Applicant in relation to the contravention of the requirements of the Enforcement Notice ENF/16/00228/01 and the Breach of Condition Notice BCN/16/00228/02. If the Council decides to grant planning permission the offences for which legal action

has been instigated will not be regularised. As such the legal action will proceed as scheduled with the trial taking place in September 2019.

6. ANY RELEVANT SITE HISTORY

Application Number	Description	Decision
MAL/457/76	Established use certificate – use of the land coloured blue for seven sailing chalets for week-end and holiday use and one houseboat for holiday use only	Approved 13.09.1976
FUL/MAL/94/00180	Mooring of barge for office use retention of existing pontoon and walkway to pontoon transfer three of the existing piles to adjacent pontoon repair riverbank and existing jetty	Approved 05.05.1994
BCN/16/00228/02	Breach of condition 3 of the planning permission 94/00180/FUL relating to the use of the barge as an office	Issued 11.12.2017
ENF/16/00228/01 (as corrected and upheld on Appeal APP/X1545/C/17/3191676)	i. The unauthorised erection of a structure, its approximate location marked with an X on the attached plan [ANNEX 2]. ii. The unauthorised material change of use of the land to a mixed use comprising a clubhouse, bar and bistro/restaurant.	Issued 11.12.2017 Appeal Dismissed 04.06.2018
FUL/MAL/17/01376	Section 73A application for extension and alterations to barge S.S. Nautica and change the use on the upper deck from office to cafe/dining/clubhouse with associated facilities.	Refused 20.08.2018
ENF/17/00159/03	The unauthorised material change of use of the land to a caravan site to be used for residential purposes.	Issued 29.10.2018 Appeal lodged 28.11.2018

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Parish / Town Councils

Name of Parish / Town Council	Comment	Officer Response
Althorne	- The vessel is considered unsafe and has no building regulations - Detrimental impact to wildlife and residents.	- Whether the structure is safe to meet building regulations is not a planning matter. Building regulations are not within the planning remit. - The impact of the development on these matters has been considered in sections 5.3

Name of Parish / Town Council	Comment	Officer Response
	<p>- It is not within marine planning consent</p> <p>- This has previously been refused by the Secretary of State.</p>	<p>and 5.5</p> <p>- The planning system allows with S.73A of the 1990 Act the submission of planning permissions retrospectively. The submission of an application under this section of the act is not a reason to refuse the application.</p> <p>- The Inspector appointed by the Secretary of State has clearly stated that the reason for upholding the Notice and dismissing the Appeal on the issue of the unauthorised use was the lack of clarity about the potential impact of the use to the natural environment. This application seeks to address this concern. The fact that there was a previous refusal is a material planning consideration of significant weight but is not sufficient on its own to justify the refusal of the application.</p>

7.2 Statutory Consultees and Other Organisations

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Highways Authority	No objection subject to condition to keep the footpath crossing the application site unobstructed.	Comment noted
Natural England	No objection subject to conditions. Subject to appropriate mitigation measures the development is unlikely to result in adverse effects to the designated sites.	Comment noted.

Name of Statutory Consultee / Other Organisation	Comment	Officer Response
Environment Agency	No objection - the site is within a flood risk area, but the use is water compatible.	Comment noted.
Essex Wildlife Trust	No objection subject to conditions	Comment noted.

7.3 Internal Consultees

Name of Internal Consultee	Comment	Officer Response
Environmental Health	No objection subject to conditions	Comment noted.

7.4 Representations received from Interested Parties

7.4.1 8 representations were received **objecting** to the application and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
The barge is not in keeping with the character, appearance and surroundings of the area and has poor design quality.	Please see section 5.2.
Negative impact on a wetland/ marshland environment and on different species of birds and wildlife.	Please see section 5.5.
Additional traffic generated will disturb residents and wildlife.	Please see sections 5.3 and 5.5.
Impact of noise pollution on residents and wildlife.	Please see sections 5.3 and 5.5.
Light pollution generated affecting residents and wildlife.	Please see sections 5.2, 5.3 and 5.5.
Development sits outside the development boundary of the village.	Please see sections 5.1.
No clearly defined waste disposal provisions with potential adverse harm from odours and rodents.	See section 5.2 regarding details to be required by condition. The distance of the site from residential properties is sufficient to prevent any issues relating to odours or rodents becoming detrimental to the amenity of the residents.
Safety/ security concerns for the marina.	Decorum of people on site is not a material planning consideration.
There is a current Enforcement Notice in force that requires the cessation of the unauthorised use. A previous application for the same development was refused in	Please see sections 3.1, 5.1 and 6.

Objection Comment	Officer Response
2018. An Inspector dismissed the appeal for the development.	
The owner has breached planning control and found guilty of planning legislation related offences in the past.	This does not carry any material weight for the determination of the application.
A planning inspectorate decision noted that the barge is in a tranquil rural setting where there is low ambient noise and that noise and disturbance from the venue and traffic levels would give rise to unacceptable impact on amenity	In the same decision the Inspector said that conditions could render the development acceptable. Please see section 5.3 of the report.
Current legislation suggests that the marina use would not be given permission and any addition to the facilities should not be allowed either.	The marina is an established use. Additions and extensions to existing uses are generally acceptable in principal but each development proposal has to be assessed on its own merits.
No requirement for the application as there are facilities in Althorne to facilitate local demands. Also, there are not so many people in the marina.	Please see section 5.1.
The application should not be considered as there is an enforcement notice, appeal decision and previous refusal by the LPA.	The Council under the discretionary powers of sections 70A and 70C of the 1990 Act could have declined to determine the application. However, this decision ought to be justified. As the amendments to the proposal go to the heart of the reason for refusal and the reason for taking enforcement action, any decision to decline to determine the application is likely to have been found to be unreasonable.
The EECOS report states there is a potential negative impact to the protected sites	The letter dated 19 February 2019 does not state that. Moreover, please see section 5.5.
The LPA should carry out an HRA.	This has been carried out.
The EECOS report talks about a trial period for a dinghy sailing club. This is a materially different use and cannot be compared.	This example was used to show that a trial period have been used in other instances. In any case, the use is considered acceptable subject to conditions and as such no trial period is required.
The application is unlawful as an HRA should be carried out before the development had commenced.	The CHSR states that planning permission should not be granted before an HRA. The 1990 Act allows application to be submitted retrospectively under S.73A. Hence the application is not unlawful.
The development is proposed to be carried out in October, within the	As the use is proposed to be seasonal, the LPA, via a condition, can limit the

Objection Comment	Officer Response
overwintering period.	season as appropriate.
The EECOS report discusses a lake where biodiversity enhancements are undertaken but this area is used to shoot birds.	Comment noted. Very limited weight has been given to this information by EECOS. Please see section 5.5.
If the applicant was different some concerns would not be raised.	Who the applicant is not be a material planning consideration.
The application form does not mention that the use is sought to be seasonal, it does not contain the hours of operation, it states that vehicle parking and waste arrangements are not relevant to the proposal. This is a misleading and/or defective application form which should not be allowed to make the application valid.	The application form for planning permission has to be read along the accompanying documents. The Design and Access Statement and the letter from EECOS both state that the use is proposed to be seasonal. The application form does not contradict this information. The Applicant is entitled to consider that some matters are not relevant to the development, If the LPA considers otherwise, the LPA has the power to impose conditions to require these details.
According to the application form the use will result in loss of employment.	It is not clear whether this information contained in the application is correct. The existing activities in the marina will continue and additional activity is sought to be regularised with this application. It is unlikely that the development will result in loss of employment. Any loss of employment may arise as a decision of the management which cannot be controlled by the planning system.
If permission is granted it should be temporary to assess the impact and if conditions have been complied with	The PPG advises that temporary permissions shall not be used but in rare circumstances when the LPA is unclear about the impact of a development. In this case the impact has not been considered to be adverse and the development is acceptable subject to conditions. Although the applicant offers in the EECOS letter to accept a temporary permission, making a permission temporary could not be justified in this instance. Furthermore, temporary permissions cannot be used to allow the LPA to monitor if conditions have been complied with. This is for the LPA's enforcement team to ensure.
The applicant has profited by not complying with the Enforcement Notice	Details of legal cases are confidential.

Objection Comment	Officer Response
and the Council should apply to confiscate the profit under the Proceeds of Crime Act.	

7.4.2 2 representations were received **in support** of the application and the reasons for support are summarised as set out in the table below:

Supporting Comment	Officer Response
Noise levels created by the proposal do not affect the neighbouring properties and are no different to any other marina with similar facilities. Noise is planned to be reduced further by using a home entertainment system. On this basis closing at 8pm would be too early.	Please see section 5.3.
The facilities provided by the marina and clubhouse are an asset to the local community.	Comment noted.
The barge is in keeping with the area.	Please see section 5.2
The access road has been maintained to a high standard.	Comment noted.

8. **PROPOSED CONDITIONS**

1. The development hereby permitted shall begin no later than three years from the date of this decision.
REASON To comply with Section 91(1) of The Town & Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. Any operational development forming part of this permission shall be carried out in accordance with the following approved plans and the details contained on them: 1015 05D and 115 04D.
REASON To ensure the development is carried out in accordance with the approved plans.
3. The use hereby permitted shall only be as a club house offering food, drinks and beverages on the premises only to the club's members, associate members and their guests. Members and associate members of the club shall only be boat owners who berth their boats at Bridgemarsh Marina and occupiers of the caravans and holiday units at Bridgemarsh Marina.
REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the highway safety in accordance with local policies S1, S7, S8, E5, D1, D2, N2, T1 and T2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.
4. The use of the club house hereby permitted shall only be carried out between 1 April and 30 September, inclusive, in any one year. Outside of this period the

premises shall remain shut and the access walkways shall be removed to prevent immediate access to the barge.

REASON To ensure the interests of protecting the natural environment in accordance with local policies S1, S7, S8, E5, D1, D2 and N2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.

5. An up to date register of visitors to the premises shall be kept at all times at the club house. The register shall contain the name of the person who visited the premises, their status in relation to the club, the name of the boat they own or visit at the marina or the address/name of the caravan or holiday unit they occupy in the marina, the date and time they visited the premises and the time they left the premises. Electronic copies of the register shall be sent to the Local Planning Authority on the last day of every calendar month the premises have operated. The register shall be made immediately available on the premises at any time to the Local Planning Authority for inspection.

REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the highway safety in accordance with local policies S1, S7, S8, E5, D1, D2, N2, T1 and T2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.

6. The premises hereby permitted to be used as a club house shall not be open to customers outside of 11:00 hours and 20:00 hours every day. No customers shall be presented on the premises outside the permitted hours.

REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the highway safety in accordance with local policies S1, S7, S8, E5, D1, D2, N2, T1 and T2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.

7. Deliveries to and collections from the site shall only be undertaken between 08:00 hours and 18:00 hours on weekdays and between 08:00 hours and 13:00 hours on Saturdays and not at any time on Sundays and Public Holidays.

REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the highway safety in accordance with local policies S1, S7, S8, E5, D1, D2, N2, T1 and T2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.

8. Notwithstanding the submitted details, no external seating shall be provided on the application site.

REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the character and appearance of the area in accordance with local policies S1, S7, S8, E5, D1, D2 and N2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.

9. No amplified music or sound shall be played on site in perpetuity.

REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers and the natural environment in accordance with local policies S1, S7, S8, E5, D1, D2 and N2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.

10. Notwithstanding the submitted details, no external storage of any items and paraphernalia associated with the use hereby permitted shall be carried out outside the barge.
REASON To ensure the appropriate use of the site in the interests of protecting the character and appearance of the area in accordance with local policies S1, S7, S8, E5 and D1 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.
11. The public footpath crossing the access to the application site shall be kept free from obstructions at all times.
REASON In the interest of public rights of way and highway safety in accordance with local policies T1 and T2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.
12. The use hereby permitted shall not commence or be open for customers unless a foul water drainage scheme to serve the club house has been submitted to and approved by the Local Planning Authority and the scheme has been implemented in accordance with the approved details. The foul water drainage arrangements shall be kept as implemented in perpetuity.
REASON To ensure the interests of protecting the natural environment in accordance with local policies S1, S7, S8, E5, D1, D2 and N2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.
13. The use hereby permitted shall not commence or be open for customers unless a scheme for the storage and removal of waste and recyclables to serve the club house has been submitted to and approved by the Local Planning Authority and the scheme has been implemented in accordance with the approved details. The storage and removal of waste and recyclables shall be kept as implemented in perpetuity.
REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the character and appearance of the area in accordance with local policies S1, S7, S8, E5, D1, D2 and N2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.
14. Notwithstanding the submitted details, no external illumination shall be installed or operated within the application site unless it is in accordance with a scheme that has been submitted and approved in writing by the Local Planning Authority. Any approved external illumination shall be turned off within 60 minutes from the end of the hours customers are allowed to be on the premises as per condition 6.
REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the character and appearance of the area in accordance with local policies S1, S7, S8, E5, D1, D2 and N2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.
15. No cooking of food shall occur at the site until full details of equipment to be installed for the extraction and control of fumes and odours, including details of noise and vibration attenuation together with a maintenance schedule for the future operation of that equipment have been submitted to and approved in writing by the local planning authority. The scheme shall also be in accordance with current guidance from DEFRA and the Heating and Ventilating Contractors' Association (HVCA) For Kitchen Ventilation Systems. The use hereby permitted shall not take place other than in accordance with these approved details.

REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the character and appearance of the area in accordance with local policies S1, S7, S8, E5, D1, D2 and N2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.

16. No extraction or ventilation equipment, vents, air conditioning units or similar plant equipment shall be installed or fitted to any external part of the barge except in accordance with a scheme to be submitted to and approved in writing by the local planning authority. The scheme as approved and installed shall be retained as such thereafter.

REASON To ensure the appropriate use of the site in the interests of protecting the amenities of adjacent occupiers, the natural environment and the character and appearance of the area in accordance with local policies S1, S7, S8, E5, D1, D2 and N2 of the approved Local Development Plan and national policies contained in the National Planning Policy Framework.