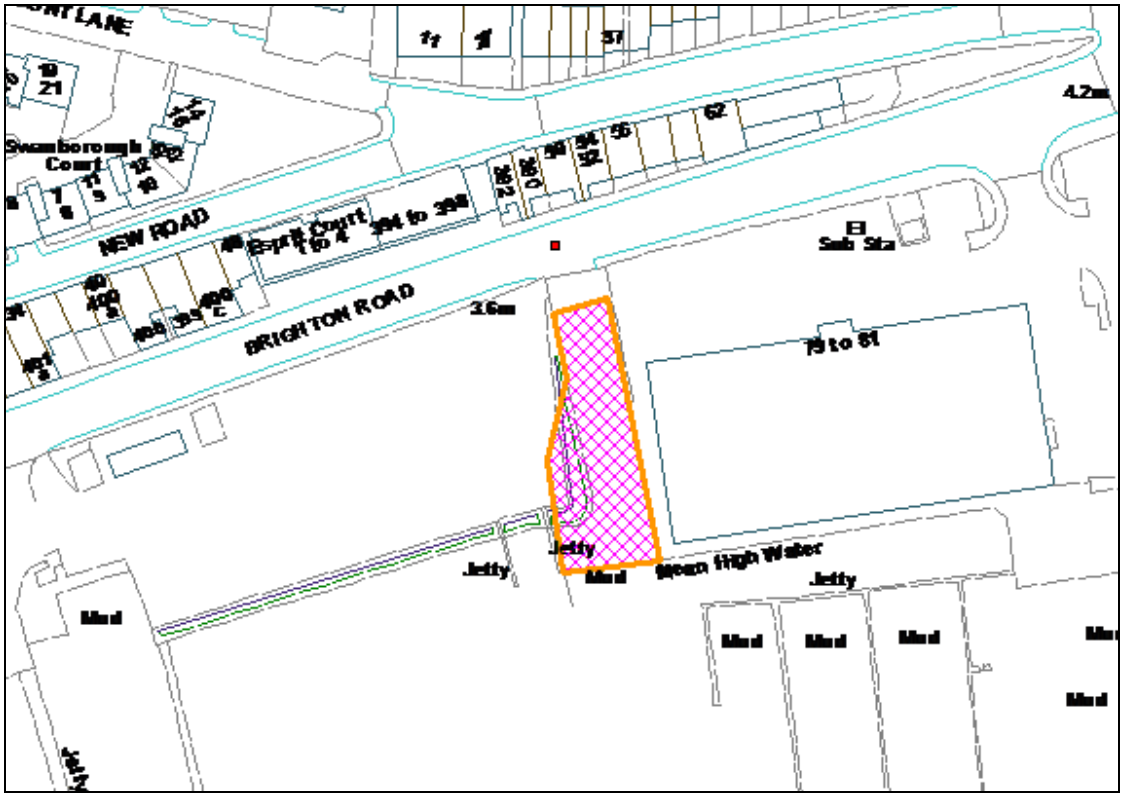
Application Number: AWDM/0784/14 **Recommendation – APPROVE, subject to S106**

Site: **Tarmount Hard, Shoreham-By-Sea**

Proposal: **Infilling of Tarmount Hard to form new stepped quay wall at southern end with pedestrian access and new fencing up to a maximum height of 2.2m.**

Applicant: Sussex Yacht Club Ward: St Mary's

Case Officer: Peter Barnett



Not to Scale

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Proposal, Site and Surroundings

This application was originally reported to the Adur Planning Committee on 21 December 2015 when Members resolved to grant permission subject to the completion of a legal agreement securing a financial payment to offset the loss of the Hard and to provide compensatory habitat. Since the meeting, the applicant has advised that the Yacht does not agree to a financial contribution of £30,000 to offset the loss of the Hard

and the application. The application was reconsidered at the May Planning Committee meeting but the Committee was not prepared to approve the development without a financial contribution and the matter was deferred to allow for further negotiations with the applicant.

The application relates to Tarmount Hard, a public slipway immediately to the east of the Sussex Yacht Club and to the west of the former Parcelforce site (79-81 Brighton Road), which is currently undergoing redevelopment to provide a mixed-use development of 132 dwellings, a food store and ancillary commercial floorspace (approved under application reference AWDM/0501/12). There are a number of houseboats moored to the east of the southern end of the Hard.

It is proposed to infill the Hard, as has been done at Surry Hard to the east, to form a stepped quay. The plan shows that the majority of the infilled area would be enclosed by a 2.2m wire mesh fence and incorporated into the yacht club land. A 2.2m wide footpath would be provided to allow access to the stepped quay. Pedestrian access would be provided to the yacht club at each end of the Hard but no vehicular access would be provided. Parking for emergency vehicles only would be provided at the northern end of the Hard. A demountable bollard is shown at the north end of the footpath.

The proposed works were considered as part of the proposals for the redevelopment of 79-81 Brighton Road as a means of improving flood resilience to protect that site with the added benefit of improving the appearance of the existing Hard, which has for some time been blocked by debris and abandoned boats (and more recently has been unlawfully obstructed by spoil from the development site), as well as encouraging visitors to the town by providing a stepped quay for the mooring of boats and pedestrian access to obtain views of the riverfront.

The land is owned by the Sussex Yacht Club and, as well as the opportunities referred to above, the proposal will also provide additional storage space in their boat yard.

The site lies within the Shoreham Conservation Area.

Consultations

West Sussex County Council: The ***Highways Officer*** has no objection as the access is limited to pedestrians only.

The ***Rights of Way Officer*** is prepared to withdraw his objection provided the future width and surface of the path is acceptable; also that careful consideration is given to enjoyment of the future path. Whilst many paths are 2.2m wide, he is mindful that a tunnel should not be created and it would be better to create an area relatively open in character so as to limit anti-social behaviour; for these reasons he expects any fence to be permeable rather than, for example, close board. The plan suggests the applicants could make provision up to 3m; he would look more favourably on a 3.0m path width

being provided as, with all the future works intended within and around the Harbour, likely viewpoints will be popular. As to surfacing, a year-round usable surface is a minimum requirement.

He notes the map suggests installation of a bollard south of the A259. The applicant must be advised that this is not permissible until such time the above legal changes are effected, when a separate application (for the bollard) to WSCC as highway authority will be required.

An application to downgrade the status of the existing hard from Restricted Byway to Public Footpath, and simultaneously reducing the legal width of the highway can be supported in principle. Restricted Byways and Public Footpaths, whilst collectively known as public rights of way (together with Public Bridleways and Byways Open to All Traffic), are also public highways as much as the nearby A259 and other roads, albeit the public access right on public rights of way is limited according to the specific path status. Any change in status or reduction in width must be the subject of a formal legal order process which Adur District Council has the powers to undertake, and it will therefore be for Adur Council to consider whether the formal legal tests are met. The Rights of Way Officer considers it particularly appropriate that Adur Council acts as the Order making authority under the Planning Acts, given the proposal arises from a local planning issue.

Adur & Worthing Councils: The ***Environmental Health*** officer recommends a precautionary approach to contaminated land with this site.

The ***Engineer*** advises that:

'the site is located wholly within Flood Zones 2 and 3 but it appears to be unaffected by surface water flooding. Tarmount Hard has been a route for fluvial flooding, so work to raise the inner end or to provide a flood gate would have been welcomed.

The application form states that surface water drainage will be dealt with via a soakaway, why? Existing surface water simply flows into the river, even when the Yacht club utilizes the land for boat storage, surface water can surely be directed into the adjacent river. In summary I have no real comments to raise, but if there is a necessity to have a soakaway then the usual clauses needs to be included.

"In the absence of any ground investigation details or drainage details in support of the application although the applicant has stated his intention to utilise soakaways, we request that should approval for this development be granted it be conditional such that 'no development approved by this permission shall commence until full details for the disposal of surface water has been approved by the Planning Authority'

Soakage tests in accordance with BRE Digest 365 (1991) would be required to be undertaken on the proposed site to meet this requirement, to ascertain the size of the soakaway required for the new impermeable roof area and or hard standing areas.'

Environment Agency: Object. '*From the plans submitted the proposal will cause a direct loss of approximately 400 square metres of Intertidal Mudflat habitat.*

No information has been supplied about any measures proposed to assess and address the risk to ensure protection of the Intertidal Habitat in this location. Until it is shown how this is to be protected and mitigated for, the risk posed by the proposed development is unacceptable. In any planning application we would expect to see like for like compensation for loss of habitat.

This is in accordance with Paragraph 118 of the National Planning Policy Framework (NPPF) which states that, if significant harm resulting from a development cannot be avoided adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

The Adur Estuary, together with Rye Harbour, represents the only significant areas of intertidal habitat between Pagham Harbour in the West and Sandwich Bay in the East making the Estuary a very important site in terms of its local ecological value. The intertidal foreshore provides a sensitive and unique habitat that supports an abundance of invertebrates and associated wading and wintering wildfowl. Mudflats are a priority habitat in the Government's UK Biodiversity Action Plan (UK BAP). One of the main objectives is to maintain at least its present extent and regional distribution. Although the area of mudflat to be affected by the proposed works is outside designated nature conservation areas, it is still considered to be a valued wildlife asset. Foreshore and inter-tidal areas which exist between low and high water mark, such as the mudflats and saltmarsh in this area, represent ecologically rich habitats within tidal river systems. The loss of inter-tidal habitats is highlighted as a threat noted in the local estuaries Biodiversity Action Plan (BAP), and saltmarsh and mudflats are national and local BAP habitats, the aim of which is a gain in the area of these habitats and no loss or damage.

As set out in Paragraph 007 of the Planning Practice Guidance, Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by Government in its Biodiversity 2020 strategy.

We therefore recommend that planning permission be refused on this basis and will maintain our objection until the applicant has supplied information to demonstrate that the risks posed by the development can be satisfactorily addressed.

To overcome our objection, the applicant will need to detail what habitats (intertidal mudflat) exist at this location and what species are likely to be using those habitats.

This can be achieved by carrying out a Phase 1 Habitat Survey. Once the applicant has this information they then need to describe the risks to these habitats in terms of loss or degradation, and the consequent risks to any species.

The applicant will either need to design the works in such a way as to have no impact and the risk is mitigated, or they will need to propose suitable alternatives in order to compensate for the loss of habitat.'

Shoreham Port Authority: *'The application concerns adjustments to a public hard, which is a place where the general public and their goods may embark and alight from vessels. As the applicant, is intending to install a set of steps to allow this continued use, we have no objection on these grounds.*

There is very little, if any, use of the hard for any purpose at present and so the application could be said to afford an improvement in land use and to the Harbour in general.

The installation of works such as these within the Harbour Limits requires the issue of a License by the Port Authority and we would be grateful if the applicant could keep in touch with us in this regard.

The works should also be compatible with future flood defences for the area, particularly since this is presently a route for flooding to occur.'

Marine Management Organisation: Any of the proposed works that fall below the level of Mean High Water Springs (MHWS) will require a Marine Licence to be in place before any of that particular work is undertaken.

Adur District Conservation Advisory Group: All of the Members agreed this should be refused due to the local feelings regarding the traditional Hards in the Shoreham area which are gradually disappearing or have become unusable due to modernisation (the Ropetackle site being an example).

Representations

6 letters of objection received:

- Loss of public hard requires court order to extinguish the right of way
- Loss of public amenity and boat launching facility
- Greed on part of yacht club to take this land
- There should be no loss of hard without provision of equivalent facility elsewhere
- Ruble and rubbish has been dumped at entrance to Hard making access impossible and illegally obstructing right of way

A letter of objection has also been received from Shoreham Slipways Group raising the following concerns:

- The proposed infilling operation will remove one of the few remaining ancient slipways/hards.

- The proposed details are very basic and don't provide clear details of the appearance. It would appear that a narrow walkway would be left sandwiched between a 2.2m high fence and the new building on the old Parcel Force site. This would impact on the view from the Brighton Road.

- Whilst the site is of little use at the moment the proposed steps will only be of minimal use and then only on the highest of tides.

- We have been in discussions with the SYC about extinguishing the Slipway/Hard. The club, whilst already owning the site, will gain a considerable amount of usable land that can be rented to members for boat storage.

- Under their Planning Consent, the Parcel Force Site developers will be paying for these changes to provide a “tidy” image for their new development.

- We suggest that a S106 contribution of £25,000 would be appropriate. This would be used towards a new slipway elsewhere on the Adur.

- The Environment Agency will require compensatory habitat for a new slipway. We have been in discussion with ADC’s foreshore engineers and lodged a request to allocate some of the land that will be flooded when the airport eastern boundary is moved as part of the new EA flood defense plans. Presumably, the EA may also require compensatory habitat for this proposal for infilling Tarmount Hard. We wish to ensure that this does not adversely impact on the SSG’s prior request for any compensatory habitat.

Relevant Planning Policies and Guidance

Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AR16
Proposed Submission Adur Local Plan (2014) Policy 11, 27, 32
Shoreham Harbour Joint Area Action Plan Consultation Draft (JAAP) (2014) Policy 11, 28, 29
Shoreham Harbour Western Harbour Arm Development Brief (2013)
National Planning Policy Framework (March 2012)

Relevant Legislation

The Committee should consider the planning application in accordance with:

- Section 70 of the Town and Country Planning Act 1990 (as amended) that provides the application may be granted either unconditionally or subject to relevant conditions, or refused. Regard shall be given to relevant development plan policies, any relevant local finance considerations, and other material considerations; and

- Section 38(6) Planning and Compulsory Purchase Act 2004 that requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

Planning Assessment

Principle

Whilst encouraging greater use of the Harbour for water-based recreation, the Local Plan does not identify any specific sites for new slipways along the river Adur (only new marinas within the Canal and improvement/relocation of existing public hards in Shoreham as part of redevelopment proposals) under saved policy AR16.
The emerging Adur Local Plan contains Policy 11 which states:

"The setting of the River Adur will be protected and opportunities taken through new development and other measures to improve public access to and along the river (where consistent with this aim) and open up views to it. New development adjacent to the river must respect its location and character. Sites on the waterfront will provide new and improved access to the water including a new waterside cycle and walkway, and slipways where appropriate, in conjunction with flood defence works where necessary."

Policy 27 states that "*Access (including new public rights of way and slipways) to the river, the coast and the South Downs National Park should be improved where possible*."

The JAAP does emphasise the importance of improved access to the waterfront and the provision of slipways within new waterfront development schemes (policy JAAP 11). There is also reference to Shoreham Harbour Partnership currently working with the Slipways Group "to identify a suitable location for a new public slipway with sufficient space for appropriately laid out parking" (para 3.9.7).

Members recently resolved to grant planning permission for a new slipway at Adur Recreation Ground (AWDM/0261/15), subject to satisfying the concerns of Natural England and the Environment Agency over the issues of the impact on overwintering birds and the provision of compensatory mud habitat. Subsequent objections to this application on the grounds of safety will require this application to be reconsidered (the application was deferred at the last Committee meeting at the request of the applicant).

This application would see Tarmount Hard filled in and it would therefore be 'lost' as a public hard. However, access to the river would still be retained by way of a stepped quay for the mooring of boats, as well as the provision of pedestrian access. The loss of the Hard would be offset by the introduction of a 3 metre public footpath to the stepped quay. This is highly significant as indicated by the Port Authority as there would still be the opportunity "for the general public and their goods to embark and alight from vessels".

The Shoreham Slipways Group has requested the applicant provide a contribution towards the provision of the new slipway and has suggested a figure of £25,000. However, the Yacht Club does not wish to pay this contribution as it considers that the benefits of infilling the Hard are sufficient to justify not having to compensate for its loss as a slipway. As mentioned elsewhere in the report, the new infilled Hard will provide improved flood defences and will enable public access to the waterfront, including for the mooring of boats, by way of a stepped quay. The infilled Hard will also provide an enhanced environment and outlook for the occupiers of the new flats at the adjacent site.

The Yacht Club does state that it would look very favourably upon a definitive and approved scheme for a new public slipway in the River and would almost certainly be a significant sponsor of such, but it is not willing to be held to ransom against Hards in its ownership as it considers that the two matters must be kept separate.

Following the May Committee, a meeting was held between representatives of the Slipway Group and the Yacht Club and agreement was reached that any funding for a new public slipway would be secured as a separate matter to this application. This reflected the previous agreement between the two organisations that any payment would have to be ratified by the membership of the Yacht Club and it would be linked to the closure of two other Hards that currently run through the Yacht Club site as part of the comprehensive flood defence solution for the site. In this respect, the Club has confirmed that it is still committed to helping financially the delivery of a public slipway.

The determining factor in this case is whether there is any planning justification for seeking a financial contribution to compensate for the loss of the Hard. As it is intended to retain public access to the Hard and it is not a slipway as such, it would not be lawful to justify refusal of the application in the absence of a financial contribution towards a public slipway. The Community Infrastructure Levy Regulations 2010 clearly state that a planning obligation shall only be entered into if it is:

(i) necessary to make the development acceptable in planning terms;
(ii) directly related to the development; and
(iii) fairly and reasonably related in scale and kind to the development.

As set out in the report, a financial contribution is not justified as it would fail to comply with any of the above requirements.

As the Hard is not a slipway as confirmed by the Port Authority and in light of the revised position of WSCC Rights of Way Officer it is not considered that a financial contributions can be insisted upon in this case.

Whilst it is appreciated that numbers are sympathetic to the endeavors of the Slipway Group to secure a public slipway, it is important to consider this planning application on its planning merits. It is also worth mentioning that delays in determining this planning application are highly likely to prevent this development being implemented. The

adjoining developer of the Parcelforce site had indicated a willingness to fill in the Hard as there would be plant and machinery available on site, but as this development proceeds at pace, this opportunity may be lost.

If the work is not carried out by the developer, it is highly likely the alterations to this Hard necessary to prevent future flood risk would have to be undertaken using public funding as part of the overall comprehensive flood defense solution for Shoreham Harbour. Members may be aware that £3.5 million Local Growth Funding was allocated to Shoreham Harbour and it is expected that this funding would be used to provide appropriate flood defences for Kingston Beach and Sussex yacht Club. Whilst this appears to be a significant level of funding, this currently would not be sufficient to also provide a flood defence solution for Tarmount Hard.

Visual amenity

The proposed works would improve the appearance of the slipway and would tidy up the currently unmaintained public right of way. The proposed boundary treatment would replace the existing flimsy wire mesh fence with a more robust mesh fence to improve security for the boat yard. In the context of the adjoining development at 79-81 Brighton Road, the infilling of the Hard would improve the setting of that development and is considered to enhance the Conservation Area.

Residential amenity

The works are relatively minor and would not have a harmful impact on the residential amenities of residents on the opposite side of Brighton Road or for the future residents of the new development to the east. Increased public access to the riverfront could have some impact on the residents of the houseboats but they are positioned to the east of the proposed quay and are not likely to suffer a serious loss of amenity.

Accessibility and parking

The Hard is a public right of way (Restricted Byway) and is to be altered to a Public Footpath with a simultaneous reduction in the legal width of the highway. This alteration must be the subject of a formal legal order process which Adur District Council must pursue separately. In principle, however, as a result of the improved flood defence that will be provided, there is no objection in principle to this alteration.

No vehicular access is to be provided and West Sussex Highways therefore has no objection to the proposal as there is no risk to highway safety. Pedestrian access to the boat yard and riverfront will be provided by way of a footpath. The applicants have agreed to widen the path to 3m following the receipt of the comments of the Rights of Way Officer and this can be secured by condition. Such an increase will improve the environment for the users by providing more space. The provision of 'permeable' fencing to the boat yard boundary will also help in making the path feel less oppressive,

particularly as the eastern boundary with 79-81 Brighton Road is to be formed by a 1.7m high concrete retaining wall.

Flood risk

The proposal will provide an improved flood defence and will prevent water from entering Brighton Road at this point, as occurs currently. The works would therefore complement the wider flood defences proposed for the area, although it is acknowledged that the Sussex Yacht Club itself would remain a weak point for the time being. However, ongoing discussions are taking place to achieve a suitable flood defence along their boundary too.

Ecology and biodiversity

One of the main concerns with regard to this proposal is the loss of approximately 400sqm of intertidal mud habitat. The Environment Agency has objected to its loss and has asked the applicant to compensate for the loss of habitat.

As was stated in the recent report to this Committee on the Adur Recreation Ground slipway proposal, the Council has committed to help the delivery of that public slipway and at its meeting on the 7th July 2015 the Joint Strategic Committee authorised:

'*Officers to negotiate the purchase of land or pay for capital works to ensure that sufficient compensatory habitat is provided for the delivery of the flood defence solution at the Yacht Club/Kingston Beach but also to assist the provision of a new public slipway and stepped quay at Tarmount Hard*.'

It was hoped that land could be identified further up the River to provide the compensatory habitat as land had previously been identified discussions with the landowner had progressed, in connection with the Adur Tidal Walls scheme. However, this land has since been turned into a wetland area as set aside and the landowner is reluctant to use other land which is in cereal production. Nevertheless further land has been identified and negotiations are continuing to ensure that appropriate compensatory habitat is available.

Normally the EA would want to ensure that the land has been identified for compensatory habitat and a scheme for habitat enhancement secured prior to the grant of planning permission. However, as with the Adur Recreation Ground slipway application, the Council is committed to securing the compensatory habitat and it is considered that a section 106 agreement to secure the delivery of the compensatory habitat prior to the infilling of the Hard would be acceptable. The EA has also been asked to consider whether the creation of additional habitat opposite the Yacht Club site as part of the Adur Tidal Walls project might also count towards necessary compensatory habitat for the infilling of this Hard. Whilst negotiations are continuing, it is apparent that there is some agreement, in principle, to deliver a level of compensatory habitat that would enable this development to proceed.

Recommendation

Subject to the Environment Agency removing their objection and to the completion of a satisfactory section 106 Obligation only to require compensatory habitat prior to the infilling of the Hard.

APPROVE:-

Subject to Conditions:-

1. Standard 3 year time limit
2. Approved plans
3. Construction management plan to be submitted and approved
4. Surfacing details to be submitted and approved
5. Fence to be green mesh as per email
6. Stop up of public right of way prior to development commencing
7. Notwithstanding submitted plans, footpath shall be minimum 3m wide
8. Development shall not commence until confirmation of height of stepped quay wall has been submitted and approved.
9. No development shall commence until full details for the disposal of surface water has been approved by the Planning Authority

11th July 2016