

## REPORT SUMMARY

<b>REFERENCE NO - 12/0768</b>		
<b>APPLICATION PROPOSAL</b> Erection of a platform and change of use of land for the siting of a residential mobile home for boat yard manager's accommodation.		
<b>ADDRESS</b> Twyford Boat Yard, Hampstead Lane, Yalding, Maidstone, Kent, ME18 6HG		
<b>RECOMMENDATION</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>  It is considered that a full time residential presence of the mobile home is justified on health and safety grounds and that there are no objections on flooding grounds.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> <b>Recommendation contrary to the views of Yalding Parish Council</b>		
<b>WARD</b> Marden And Yalding	<b>PARISH/TOWN COUNCIL</b> Yalding	<b>APPLICANT</b> Mr John Putnam <b>AGENT</b> Peter Waller Planning Ltd
<b>DECISION DUE DATE</b> 13/09/12	<b>PUBLICITY EXPIRY DATE</b> 11/10/16	<b>OFFICER SITE VISIT DATE</b> 14/07/16

## MAIN REPORT

### 1.0 SITE DESCRIPTION

- 1.01 Twyford Boatyard is located on the south side of the River Medway due west of where the River Tiese meets the River Medway at Twyford Bridge. The mobile home, the subject of this application, is raised above ground level by a supporting framework with a raised balcony providing access running along the entire south west face of the mobile home. The mobile home is located close to the north-west boundary of the boatyard on an area of raised ground. The mobile home structure was granted a lawful development certificate for its retention under application MA/07/0103.
- 1.02 Site access is via a footbridge from Hampstead Lane with a locked barrier in place to prevent unauthorised vehicular access. To the north of the site is the Teapot Island Café with the River Teise acting as a barrier to open land to the east. There is also open land to the south while the west site boundary is defined River Medway onto which the boatyard has direct access.
- 1.03 In a wider context, the adopted local plan identifies the site as falling within open countryside forming part of Area of Local Landscape Importance (ALLI).

## **2.0 RELEVANT PLANNING HISTORY**

- 2.01 MA/07/0103: An application for a certificate of lawfulness for an existing development being the use of the land for the stationing of a caravan –APPROVED
- 2.02. MA/07/1435: Change of use of land to the stationing of one caravan for residential use – REFUSED – 26<sup>th</sup> August 2007 on the grounds that it represented unsustainable residential development in a rural area and was unacceptable on flood risk grounds.
- 2.03 Both the above applications relate the mobile home which is the subject of the current application.

## **3.0 PROPOSAL**

- 3.01 Retrospective planning permission is sought to retain the mobile home for residential, use by the site manager and supporting platform.
- 3.02 The following has been submitted in support of the proposal:
- The boatyard operates on a 24/7 basis throughout the year providing berths for 78 vessels with each berth in close proximity to one another.
  - The age range of boat owners is extremely wide (between 20 and 80 years of age).
  - Access to the yard by boat owners can be gained at any time with activity taking place throughout the day with owners sometimes staying overnight.
  - Accidents and incidents take place within the yard sometimes late at night requiring the emergency services to be called with boat owners falling ill or boats catching fire requiring immediate on site action to save other boats and the yard from damage.
  - The applicants are the sole key holders for emergency vehicles to the site acting in a health and safety capacity for the yard and its occupants.
  - Also provides a security presence stopping thefts and burglaries from boats with supporting statements from residents to this effect.
  - Consider a full time health and safety and security presence is required to secure the efficient and safe management of the yard which is key to the yards ongoing success and which would put its continued existence in jeopardy should it be required to cease.
- 3.03 In support of the health and safety case a health, safety and security report was submitted as part of the application and which is summarised below:
- Legislation requires boat yard operators to ensure their facilities are safe both for operatives and boat owners.
  - Site contains highly flammable substances being fuel oil along with propane, butane and acetylene with a number of potential ignition sources such as electric sockets, motors being started along with welders and grinding equipment for boat repairs.
  - The environment of a boatyard is inherently risky with the possibility of fire and explosions, falling into water and drowning along with slips, trips, falls and crush injuries.
  - The risks associated with the above are currently generally managed in an appropriate fashion with proper storage of flammable materials, lighting for access and various alarm systems.
  - Though individual boat owners are partly responsible for their own health and safety they do not have an overview and knowledge of the site in the same way as a full time management presence which could alert, provide access for and direct emergency services in the case of an incident.

- Though the site is currently reasonably secure there is uncontrolled river access and there is still potential for unauthorised access.
- Boat yards are an inherently risky environments and consider there is a clear case for a permanent manager/residential presence or security guards to deal with incidents taking place outside normal working hours

3.04 As the site lies within a flood zone the application is accompanied by an FRA which is summarised below:

- 100 year flood level plus climate change will result in a flood level of 12.72 AOD.
- Existing ground level is 11.46 AOD and current threshold level of the mobile home is 12.25 AOD.
- FRA recommends this be increased to 13.32 AOD by of a platform while the mobile home will be secured to the supporting structure.
- Applicants already sign up to the EA warning floodline along with a boat to provide access to a safe point should any occupants not respond to warnings and fail to evacuate in good time.

3.05 The applicants have also provided further information on how their flood warning and mitigation measures responded to actual events in the 2013 floods:

- Given knowledge of the river and noticing rising levels instructed boat owners not to leave the marina.
- In constant contact with EA who were monitoring the situation who advised there was no imminent problem.
- On 24<sup>th</sup> December at around 0600 hrs received flood evacuation instruction from the EA.
- Inspection of the marina revealed 4 boats with occupants inside asleep who were advised to immediately leave the site.
- After leaving site about 2 hrs later received a call from a neighbour that the area was under water.
- After 4 days returned to the site which revealed some damage to boats and outbuildings, The elevated position of the mobile home allowed floodwater to flow underneath it but it was otherwise completely untouched.
- Consider the EA warning system worked well and if applicant had not been on site the 4 persons still asleep on their boat could have been at risk as they would not have been otherwise aware of the flooding situation.
- Have since bought 3 inflatable boats to ensure speedy evacuation of the site in the event of a flash flood though such an event has never happened.
- Consider the above incident underlines the case for 24 hr management of the site which secured the safety of all persons affected by this extreme flooding event.

#### **4.0 POLICY AND OTHER CONSIDERATIONS**

The National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)  
Adopted Local Plan: ENV28, ENV35, T19  
Submission version of the Draft Local Plan: SP17, DM30

#### **5.0 LOCAL REPRESENTATIONS**

5.01 13 neighbouring properties notified – 7 representations received supporting the proposal on the following grounds:

- Though there has always been a caravan on site it was not lived in.

- This lack of security meant that boats laid up over the winter months had outboard motors and fuel stolen.
- In the flood event of 2000 the mobile home was the only structure not affected.
- In January 2007 a suspected arson attack destroyed two boats with severe damage to a third boat with both the police and fire service raising concern that the site was not managed on a 24/7 basis.
- The current situation provides greater security and should 24/7 management not be permitted anticipate a return to the former situation.
- In the evening of the 2<sup>nd</sup> March 2012 boat owner on his own was injured. Without the presence of the applicants who contacted emergency services the situation may have gone unattended making a clear case for 24/7 management of the site.
- Other marinas in the locality have suffered vandalism and theft which is not the case with Twyford Marina.
- People sleep on and occupy their boats throughout the year and having a 24/7 management presence is a key health and safety consideration.
- The site is kept in good condition and extremely well managed and anti social behaviour by boat owners or the public is regulated and controlled to the benefit of the wider community.

## 6.0 CONSULTATIONS

- 6.01 **Yalding Parish Council:** Have checked with the other marina in Yalding and it does not have 24 hour security. See no reason for this boat yard to have 24 security. Feel it would be completely irresponsible to allow occupation of this site which is so badly effected by flooding. Concerned this life threatening situation has been allowed to continue for so long.
- 6.02 **EA:** Have no objection to the development at this location. However as the site is situated within flood zone 3a, an area associated with a high probability of flooding a condition requiring the finished floor level of the mobile home should be a minimum of 13.32mODN should be imposed.
- 6.03 **Crime prevention and architectural liaison officer:** In view of an incident where a number of boats were destroyed by fire support 24/7 occupation of the site which would benefit boat owners and the local community. Such occupation would result in swift detection and containment were a similar situation to arise being a good crime and self-policing measure.
- 6.04 Following the health and safety report submitted by the applicants this was the subject of independent review. The key points of this assessment are summarised below:
- Under the Health and Safety Act the owners of commercial premises are required to protect the health, safety and welfare of all persons.
  - Does not question the applicants' justification for 24/7 occupation of the site which is down to them but having reviewed the information in his professional role would not require a person to be on site all times.

## 7.0 BACKGROUND PAPERS AND PLANS:

- 7.01 This development relates to the details shown on drawing nos. 2, 3, 4, 5, 6, 7 and 8 received on 26th April 2012, no. 1 received on 3rd May 2012 'Health, Safety and Security Report' dated the 27<sup>th</sup> June 2012, Flood Risk Assessment dated the 16<sup>th</sup> April 2012 and planning statement received the 26<sup>th</sup> April 2012 and letters dated the 1<sup>st</sup> May 2012 and 25<sup>th</sup> July 2016.

## 8.0 APPRAISAL

8.01 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications must be determined in accordance with the Development Plan unless other material considerations indicate otherwise. In this case the Development Plan comprises the Maidstone Borough-Wide Local Plan 2000 and policies contained with the submission version of the draft local plan. The site lies within open countryside outside and is there subject to policy ENV28 of the adopted local plan.

8.02 Policy states ENV 28 states that:

*“In the countryside planning permission will not be given for development which harms the character and appearance of the area or the amenities of surrounding occupiers, and development will be confined to:*

- (1) that which is reasonably necessary for the purposes of agriculture and forestry; or*
- (2) the winning of minerals; or*
- (3) open air recreation and ancillary buildings providing operational uses only; or*
- (4) the provision of public or institutional uses for which a rural location is justified; or*
- (5) such other exceptions as indicated by policies elsewhere in this plan.”*

8.03 Policy SP17 of the submission version of the draft local plan is more detailed than policy ENV28 but essentially replicates the key development restraints provisions of policy ENV28.

8.04 None of the exceptions against the general policy of development restraint in rural areas set out in policy ENV28 of the adopted local plan and policy SP17 apply to this application which therefore represents a departure from the Development Plan. In such circumstances, it falls to consider whether there are any overriding material considerations justifying a decision not in accordance with the Development Plan and whether granting planning permission would result in unacceptable demonstrable harm incapable of being acceptably mitigated.

8.05 The application is also subject to policy ENV35 of the adopted local plan relating to ALLI's which requires that landscape protection be given significant weight in determining applications.

8.06 The key issues in relation to this application are therefore principle, impact on the rural character and landscape quality of the locality and flood risk.

### Principle:

8.07 It is acknowledged that planning permission has already been refused under ref: 07/1435 for the change of land to the stationing of one caravan for residential use on the grounds it represented unsustainable residential development in a rural area and was unacceptable on flood risk grounds. A key consideration therefore has to be whether there has been any material changes in circumstances justifying a different decision now.

8.09 Information in connection with application ref:07/1435 mainly referred to site security and the view taken this was insufficient to justify what amounted to a new dwelling. The applicants have since submitted further information relating not only security but health

and safety considerations as well. No flood risk assessment (FRA) was submitted either and an FRA has also been submitted as part of this application.

- 8.10 It must be stressed at the outset that planning permission is not being sought for the stationing of the mobile home which is lawful by virtue of the lawful use certificate granted under ref: MA/07/0103. Furthermore the mobile home can be used for purposes ancillary to the use of the boatyard without consent. It is only its use as a permanent dwelling for the site manager which is primarily the subject of this application. As a further comment, the use has elements of live work use. The NPPF gives support for sustainable development which minimises traffic generation and encourage elements of flexible working as is the case here.
- 8.11 As such given the stationing of the mobile home is lawful, its impact on the character of the countryside and landscape quality of the ALLI are not matters up for consideration as part of this application. Nevertheless, Members are advised that the mobile home is tucked away in a well screened location and its visual impact is almost wholly contained within the application site.
- 8.09 As such planning permission is being sought to continue use of the mobile home as dwelling in the countryside occupying an unsustainable rural location.
- 8.10 Paragraph 55 of the NPP states that:
- To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
  - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
  - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
  - the exceptional quality or innovative nature of the design of the dwelling.
- 8.12 The development clearly does not fall within any of the above categories. The sole justifications are therefore (a) in order to meet health and safety requirements and (b) as a proportionate response to security issues identified.
- 8.13 It is undoubtedly the case that an operational boatyard and marina, where the servicing and repair of boats is undertaken involving the use of flammable substances and heavy equipment brings its own risks. In addition, the very nature of this marina environment poses additional risks to boat owners with many opportunities for trips and falls both within cramped environment of the boats themselves and when entering and leaving the boats. Furthermore it would appear that boat owners carry out their own maintenance while some choosing to be on boats for long periods, including overnight stays bringing its own risks. Such temporary occupation (as opposed to a permanent residential moorings) is not subject to planning control.
- 8.14 Third party evidence and that submitted by the applicant supports the view that from a health and safety perspective there have been occasions where a full-time management presence on site has been of assistance to people in need whether

through injury or providing warnings of imminent flooding. Given the nature of the events that took place it is considered likely that timely assistance could only have been provided by the applicant's presence.

- 8.15 It is acknowledged the Council sought its own advice from a health and safety consultant who questioned the need for somebody to be on site all the time. Nevertheless, it is evident from the submitted evidence there have been occasions where if out of hours assistance had not been present severe harm to individuals could have occurred. This includes an event where the on-site assistance facilities ensured the safe evacuation of the site in a major flood event and persons on board boats within the arena.
- 8.16 In relation to security issues the police see a permanent residential presence as a crime deterrent. The site perimeter is reasonably secure with few access points while the site is relatively remote and well screened. As such it is considered there is less of an argument based on security considerations.
- 8.17 In conclusion unless there are overruling objections to the use continuing remaining on flooding risk grounds ( which will be assessed later in this report) given the inherently risky nature of the marina's operations, that human safety is a material planning consideration and evidence showing how an out of hours presence has already assisted people in need, it is considered this provides a very strong case for allowing the continuing full time occupation of the mobile home by a site manager all the while the marina remains.

**Flooding:**

- 8.18 The EA raises no objection to the development though it does raise several points. Firstly, it draws attention to the NPPF technical guidance which classifies the site as water compatible development referring to "essential ancillary sleeping or residential accommodation for staff required by uses in this category, subject to a specific warning and evacuation plan".
- 8.19 It also states that though the development is appropriate it should still be subject to the Sequential Test. In response to this, for the health and safety reasons and its strict association with the marina as set out above it is considered an on-site presence is justified and applying the sequential test is not appropriate to this application. Furthermore, given the nature of the site and its topography, it is considered the siting of the mobile home represents the optimum location in flood risk terms and is flood resilient subject to the appropriate measures.
- 8.20 Reference is also made to the platform to raise the development 600mm above the predicted 1% Annual Exceedance Probability (AEP) climate change flood level. The EA considers this will mitigate the risk of internal flooding and provide an area of safe refuge if prior evacuation has not been possible. It also notes the mobile home is tethered to prevent it from being washed away during a flood. It therefore considers flood risk has been mitigated as far as possible.
- 8.21 The EA also sets out concerns regarding the ability to access and egress the site during a flood event. Ground levels around the site are approximately 11.46metres above Ordnance Datum Newlyn (maODN). Under a 1% Annual Exceedance Probability (AEP) climate change flood event the immediate area could experience flooding of approximately 1.3m in depth. However, as set out in the FRA the floor level of the mobile home will be a minimum of 13.32 ODN which is achieved by a supporting

platform in line with the EA recommendations. Also the EA acknowledge the applicants already subscribe to its Floodline Warning Direct service while a boat will be available to provide a means of escape from the site which represents an appropriate evacuation plan.

- 8.22 The EA also advises that a Local Authority should formally consider emergency planning and rescue implications of new development in making their decisions. Clearly development which places the emergency services at undue risk should be avoided. However, the early warning and evacuation measures in place should ensure that no occupants remain on site requiring evacuation.
- 8.23 As such while the Parish Councils objections to the development on flooding grounds are noted, given the nature of the development in support of a water compatible use along with the flood mitigation, early warning and emergency evacuation measures set out, it is considered there is no flooding objection to residential occupation of the mobile home continuing subject to its occupation only being in connection with the marina use of the site.

### **Other matters**

- 8.24 Reference has been made to the development being a departure from the development plan which would normally require press and site notices to be posted to this effect. However given the limited scale and impact of the proposal it is not considered to represent a material departure from the development plan requiring such measures to be put in place.

## **9.0 CONCLUSIONS**

- 9.01 It is acknowledged that planning permission has already been refused for the development now being sought. However given the additional information that has been submitted it is considered a full time residential presence of the mobile home is now justified on health and safety grounds and while in the absence of objection on flooding grounds it is recommended planning permission be granted for a residential use in strict association with the marina. The mobile home is already approved under the 2007 use and thus the landscape or other impacts of the mobile home are not relevant matters here though it should be stressed that the visual impact of this small scale development is largely contained within the application site.

## **10.0 RECOMMENDATION – GRANT Subject to the following conditions:**

1. The finished floor level of the mobile home shall be a minimum of 13.32mODN.

Reason: To minimise the risk of flooding.

2. The mobile home hereby permitted shall only be used as managers accommodation in connection with Twyford Bridge Marina and for no other purpose.

Reason: To reflect the special circumstances of the development.

3. The flood warning and evacuation measures set out in the flood risk assessment dated 16<sup>th</sup> April 2012 and letter dated the 25<sup>th</sup> July 2016 shall be maintained at all times in accordance with the submitted details.

Reason: In the interests of public safety.



4. The development hereby approved shall remain as shown on drawing nos: 2, 3, 4, 5, 6, 7 and 8 received on 26th April 2012 and no. 1 received on 3rd May 2012.

Reason: In the interests of amenity.

## INFORMATIVES

### General

The River Medway is a designated 'main river' and under the jurisdiction of the Environment Agency for the purposes of its land drainage functions. Written consent is required under the Water Resources Act 1991 and associated Byelaws prior to the carrying out of any works in, over, or under the channel of the watercourse or on the banks within eight metres of the top of the bank, or within eight metres of the landward toe of any flood defence, where one exists. For maintenance reasons, we will not normally consent works which obstruct the eight metre Byelaw Margin.

### Pollution prevention

All precautions must be taken to avoid discharges and spills to the ground. For advice on pollution prevention, the applicant should refer to our guidance "PPG1 – General guide to prevention of pollution", which is available on the Environment Agency website.

### Note to Applicant

In accordance with paragraphs 186 and 187 of the NPPF, Maidstone Borough Council (MBC) takes a positive and proactive approach to development proposals focused on solutions. MBC works with applicants/agents in a positive and proactive manner by:

Offering a pre-application advice and duty desk service.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

Following clarification and amendment of the submitted details the application was acceptable

Case Officer: Graham Parkinson

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.