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To: MEMBERS OF THE PLANNING COMMITTEE  
Councillors Blackwell (Chair), C.White (Vice-Chair), B.Black,  
Botten, Chotai, C.Farr, Gray, Lockwood, Moore, Prew and  
Steeds

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Substitute Councillors: Allen, Cooper and Wren

C.C. All Other Members of the Council

28 September 2022

Dear Sir/Madam

## **PLANNING COMMITTEE THURSDAY, 6TH OCTOBER, 2022 AT 7.30 PM**

The agenda for this meeting of the Committee to be held in the Council Chamber, Council Offices, Station Road East, Oxted is set out below. If a member of the Committee is unable to attend the meeting, please notify officers accordingly.

2022/841 - Divers Cove, North Park Lane, Godstone, RH9 8ND

If any Councillor is interested in this item on the agenda, a copy of the applications documents can be sent to you. Please note copies are already being provided to members of the committee. If you would like a copy sent to you, please email Paul Batchelor in the Development Management team ([PBatchelor@tandridge.gov.uk](mailto:PBatchelor@tandridge.gov.uk)) to request a copy.

Should members require clarification about any item of business, they are urged to contact officers before the meeting. In this respect, reports contain authors' names and contact details.

If a Member of the Council, not being a member of the Committee, proposes to attend the meeting, please let the officers know by no later than noon on the day of the meeting.

Yours faithfully,

David Ford  
**Chief Executive**

## **AGENDA**

- 1. Apologies for absence (if any)**
- 2. Declarations of interest**

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter:

- (i) any Disclosable Pecuniary Interests (DPIs) and / or
- (ii) other interests arising under the Code of Conduct

in respect of any item(s) of business being considered at the meeting. Anyone with a DPI must, unless a dispensation has been granted, withdraw from the meeting during consideration of the relevant item of business. If in doubt, advice should be sought from the Monitoring Officer or his staff prior to the meeting.

**3. Minutes from the meeting held on the 28 July 2022** (Pages 3 - 4)

**4. To deal with questions submitted under Standing Order 30**

**5. Applications for consideration by committee** (Pages 5 - 14)

5.1 2022/841 - Divers Cove, North Park Lane, Godstone, RH9 8ND (Pages 15 - 26)

5.2 2021/75 - Oldencraig, Tandridge Lane, Lingfield, Surrey, RH7 6LL (Pages 27 - 48)

**6. Recent appeal decisions received**

To receive a verbal update from officers relating to appeal decisions by the Planning Inspectorate resulting from previous committee decisions.

**7. Interim Chief Planning Officer update on the performance of the Council's Planning Applications web page**

**8. Any urgent business**

To deal with any other item(s) which, in the opinion of the Chair, should be considered as a matter of urgency in accordance with Section 100B(4)(b) of the Local Government Act 1972.

## TANDRIDGE DISTRICT COUNCIL

### PLANNING COMMITTEE

Minutes and report to Council of the meeting of the Committee held in the Council Chamber, Council Offices, Station Road East, Oxted on the 28 July 2022 at 7:30pm.

**PRESENT:** Councillors Blackwell (Chair), C.White (Vice-Chair), B.Black, Chotai, C.Farr, Gray, Lockwood, Moore, Prew and Steeds

**ALSO PRESENT:** Councillors Allen, Evans, S.Farr and Gaffney

**APOLOGIES FOR ABSENCE:** Councillor Mansfield

#### 94. DECLARATIONS OF INTEREST

Councillors Farr stated that he had received a number of communications relating to agenda item 5.1 (minute number 96) but stated that they would not be considered as part of his decision making on the application.

Councillor Allen stated that he was the Chairman of the Neighbourhood Plan Steering Committee and would be speaking in respect of agenda item 5.3 (minute number 97).

#### 95. MINUTES FROM THE MEETING HELD ON 7 JULY 2022

The minutes of the meeting were confirmed and signed by the Chair.

#### 96. 2021/1800 - NEW ALDI SUPERMARKET, 381 CROYDON ROAD, CATERHAM

The Committee considered an application for the demolition of existing buildings and the erection of a Class E retail unit, including the refurbishment of an existing office unit to provide a commercial unit on the ground floor with residential dwelling above alongside access, car parking and associated works.

The Officer recommendation was to refuse the application.

Mr Stephen Tuddenham from Waitrose spoke against the application.

Councillor Jeremy Webster of Caterham Valley Parish Council spoke against the application.

Mr Richard Khodabaksh from Aldi spoke in support of the application.

The Committee also heard representations from Mr Paul Lulham of DHA Transport, the Council's transport consultants and Mr Mike Green from Surrey Highways in respect of vehicular access to the site.

During a lengthy debate, it was agreed by the Committee that the words *'that safe and suitable access to the site and'* be removed from the ground for refusal as set out on pages 7 and 8 of the agenda pack.

**RESOLVED** – that planning permission be refused.

**97. 2021/1922 - LAND TO THE REAR OF THE PARADE, WESTMORE GREEN**

The Committee considered an application for the demolition of existing buildings and the erection of two duplex flats, with parking & landscaping.

The Officer recommendation was to refuse the application.

Councillor Jason Syrett of Tatsfield Parish Council spoke in favour of the application.

The applicant's agent, Mr Adem Mehmet, spoke in support of the application.

**RESOLVED** – that planning permission be refused.

**98. 2022/98 AND 2022/295 - HUT 1, HARESTONE DRIVE, CATERHAM, SURREY, CR3 6YQ**

The Committee considered an application for the erection of two detached dwelling houses, with attached garages, associated parking and landscaping with access from a newly formed culde-sac extended north-west from Planning Appeal Ref: APP/M3645/W/20/3256724.

Councillor Jeremy Webster of Caterham Valley Parish Council spoke against the application.

During the debate, the Committee agreed to include the following additional reason for refusal:

*“The proposed development represents an overdevelopment of the site which will have an adverse impact on the character of this part of the Harestone Valley contrary to Policy CCW1 of the Caterham, Chaldon and Whyteleafe Neighbourhood Plan and the SPG.”*

**RESOLVED** – that planning permission be refused.

Rising 11.36pm

## REPORT TO THE PLANNING COMMITTEE ON 6 OCTOBER 2022

### AGENDA ITEM 5 APPLICATIONS FOR CONSIDERATION BY THE COMMITTEE

To consider the application detailed in items 5.1 to 5.2

Notes:

- (i) All letters received commenting on applications adversely or otherwise will be available in the Council Chamber for inspection by Members prior to the meeting. Summaries of the public responses to applications are included in the reports although Members should note that non-planning comments are not included.
- (ii) Arrangements for public participation in respect of the applications will be dealt with immediately prior to the commencement of the meeting.

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Background papers: Surrey Waste Plan 2008; Surrey Minerals Plan Core Strategy 2011; The Tandridge Core Strategy Development Plan Document 2008; The Tandridge Local Plan: Part 2 – Detailed Policies 2014; Woldingham Neighbourhood Plan 2016; The Harestone Valley and Woldingham Design Guidance Supplementary Planning Documents 2011; Village Design Statement for Lingfield – Supplementary Planning Guidance; Woldingham Village Design Statement – Supplementary Planning Guidance; Conservation Area Appraisal of the Bletchingley Conservation Area Supplementary Planning Guidance; Limpsfield Neighbourhood Plan 2019

Government Advice: National Planning Policy Framework  
Planning Practice Guidance (PPG)

**PLANNING COMMITTEE – 6 OCTOBER 2022 – RECOMMENDATIONS**

<b>ITEM NO.</b>	<b>APPLICATION NO.</b>	<b>SITE ADDRESS</b>	<b>APPLICATION DETAILS</b>	<b>RECOMMENDATION</b>
5.1	<b>2022/841</b>	Divers Cove North Park Lane Godstone RH9 8ND	Variation of condition 8 (Approved operating times) to extend opening times, attached to 2015/1122 for the "Change of use of land to diving centre (Class D2) with associated ancillary portacabins and car parking".	<b>PERMIT subject to conditions</b>
5.2	<b>2021/75</b>	Oldencraig, Tandridge Lane, Lingfield, Surrey, RH7 6LL	Deed of Variation to Section 106 Agreement associated with planning permission for Demolition of existing buildings and erection of 22 dwellings with associated parking and amenity space.	<b>AGREE to Deed of Variation to S106 Legal Agreement</b>

## SUMMARY OF RELEVANT POLICIES & NATIONAL ADVICE FOR PLANNING APPLICATIONS IN APPENDIX A.

### Core Strategy

Policy CSP1 sets several strategic aims in terms of the location of development. It seeks to promote sustainable patterns of travel, make the best use of land within the existing built-up areas.

Policy CSP2 sets out the Council's approach to housing supply.

Policy CSP3 seeks to manage the delivery of housing when the Council exceeds its rolling 5-year supply by more than 20%. When such an oversupply exists, the Council will refuse development of unidentified residential garden land sites of 5 units and above or site larger than 0.2ha where the number of dwellings is unknown. Account must be taken of smaller sites forming parts of larger sites and infrastructure provision as well as significant social or community benefits.

Policy CSP4 is an interim holding policy pending the adoption of a substitute policy in an Affordable Housing DPD. It sets a threshold within built up areas of 15 units or more or sites in excess of 0.5ha and within rural areas of 10 units or more. The policy requires that up to 34% of units would be affordable in these cases with the actual provision negotiated on a site by site basis. There is a requirement that up to 75% of the affordable housing will be provided in the form of social rented or intermediate or a mix of both.

Policy CSP5 refers to rural exception sites and states that exceptionally, land adjoining or closely related to the defined rural settlements which would otherwise be considered inappropriate for development may be developed in order to provide affordable housing subject to certain criteria.

Policy CSP7 requires sites providing 5 units or more to contain an appropriate mix of dwelling sizes in accordance with identified needs.

Policy CSP8 sets out the Council's approach to the provision of Extra Care Housing, including its targets for such provision.

Policy CSP9 sets out the criteria for assessing suitable Gypsy and Traveller sites to meet unexpected and proven need.

Policy CSP11 sets out the Council's approach to infrastructure and service provision.

Policy CSP12 seeks to manage travel demand by requiring preference to walking, cycling and public transport; infrastructure improvements where required and use of adopted highway design standards and parking standards.

Policy CSP13 seeks to retain existing cultural, community, recreational, sport and open space facilities and encourage new or improved facilities.

Policy CSP14 seeks to encourage all new build or residential conversions meet Code level 3 as set out in the Code for Sustainable Homes and that commercial development with a floor area over 500sq m will be required to meet BREEAM "Very Good" standard. On site renewables are also required.

Policy CSP15 seeks to ensure that the design and layout of development is safe and secure, that new buildings are adaptable for the disabled and elderly, that information technology can be included, that all development is accessible to all groups and that grey water recycling and/or segregated surface and foul water disposal is used.

Policy CSP16 sets out the Council's position on aviation development in the District with specific reference to its position on development at Redhill Aerodrome.

Policy CSP17 requires that biodiversity is taken into account.

Policy CSP18 seeks to ensure that developments have a high standard of design respecting local character, setting and context. Amenities of existing occupiers must be respected. Wooded hillsides will be respected and green space within built up areas protected. Development on the edge of the Green Belt must not harm the Green Belt.

Policy CSP19 sets a range of densities for new development.

Policy CSP20 sets out the Council's principles for the conservation and enhancement of the AONBs and AGLVs.

Policy CSP21 states that the character and distinctiveness of the District's landscapes and countryside will be protected, and new development will be required to conserve and enhance landscape character.

Policy CSP22 sets out how the Council will seek to develop a sustainable economy.

Policy CSP23 set out specific aims for the town centres of Caterham Valley and Oxted.

## **Tandridge Local Plan: Part 2 – Detailed Policies – 2014**

Policy DP1 sets out the general presumption in favour of sustainable development.

Policy DP2 sets out the policies for development in the town centres, including within the primary and secondary shopping frontages

Policy DP3 sets out the policies for development in local centres, other centres and villages

Policy DP4 sets out the circumstances under which proposals for the alternative use of commercial and industrial sites will be permitted.

Policy DP5 sets out criteria for assessing whether proposals are acceptable in relation to highway safety and design.

Policy DP6 sets out criteria for assessing proposals for telecommunications infrastructure.

Policy DP7 is a general policy for all new development. It outlines that development should be appropriate to the character of the area, provide sufficient parking, safeguard amenity and safeguard assets, resources and the environment, including trees.

Policy DP8 sets out a number of criteria for assessing whether the redevelopment of residential garden land will be acceptable.



Policy DP9 sets out the circumstances in which the erection of gates, walls and other means of enclosure will be permitted.

Policy DP10 confirms the general presumption against inappropriate development in the Green Belt and states that inappropriate development will only be permitted where very special circumstances exist which clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and any other harm.

Policy DP11 sets out the circumstances in which development in the Larger Rural Settlements will be permitted.

Policy DP12 sets out the circumstances in which development in the Defined Villages in the Green Belt will be permitted.

Policy DP13 sets out the exceptions to the Green Belt presumption against inappropriate development in the Green Belt and the circumstances in which new buildings and facilities, extensions and alterations, replacement of buildings, infill, partial or complete redevelopment and the re-use of buildings will be permitted.

Policy DP14 sets out a number of criteria for assessing proposals for garages and other ancillary domestic buildings in the Green Belt.

Policy DP15 sets out criteria for assessing proposals for agricultural workers' dwellings in the Green Belt.

Policy DP16 states that the removal of agricultural occupancy conditions will be permitted where the Council is satisfied that there is no longer a need for such accommodation in the locality.

Policy DP17 sets out criteria for assessing proposals for equestrian facilities.

Policy DP18 sets out the circumstances in which development involving the loss of premises or land used as a community facility will be permitted.

Policy DP19 deals with biodiversity, geological conservation and green infrastructure.

Policy DP20 sets out the general presumption in favour of development proposals which protect, preserve or enhance the interest and significance of heritage assets and the historic environment.

Policy DP21 deals with sustainable water management, and sets out criteria for assessing development in relation to water quality, ecology and hydromorphology, and flood risk.

Policy DP22 sets out criteria for assessing and mitigating against contamination, hazards and pollution including noise.

## **Woldingham Neighbourhood Plan 2016**

Policy L1 is a general design policy for new development

Policy L2 sets out criteria for assessing new development proposals in relation to the Woldingham Character Areas

Policy L3 relates to landscape character

Policy L4 relates to proposals for new community facilities

Policy L5 relates to development proposals for The Crescent and its regeneration

Policy L6 seeks to support improvements to the accessibility of Woldingham Station

Policy L7 relates to the development of broadband and mobile communications infrastructure

Policy L8 seeks to safeguard a number of Local Green Spaces as designated by the Plan

Policy C1 seeks to promote residents' safety

Policy C2 seeks to support proposals and projects which improve local transport services

Policy C3 supports the improvement of pedestrian and cycle routes

Policy C4 supports proposals which promote networking and residents' involvement on local societies and organisations

### **Limpsfield Neighbourhood Plan 2019**

Policy LN1 sets out a spatial strategy for the Parish.

Policy LN2 requires that all new development provides an appropriate mix of housing types and size, including smaller units (3 bedrooms or fewer) for sites over a certain size.

Policy LN3 seeks a high quality of design, reflecting the distinctive character of particular areas of the Parish.

Policy LN4 relates to new development in the Limpsfield Conservation Area.

Policy LN5 relates to landscape character.

Policy LN6 identifies a number of Local Green Spaces, and seeks to protect their use.

Policy LN8 seeks to promote biodiversity.

Policy LN9 relates to business and employment, including in relation to Oxted town centre.

Policy LN10 relates to the rural economy.

Policy LN11 seeks to protect community services in Oxted town centre.

Policy LN12 seeks to protect community services in Limpsfield Village and other parts of the Parish.

Policy LN13 supports sustainable forms of transport.

Policy LN14 supports the provision of super-fast broadband.

## **Caterham, Chaldon and Whyteleafe Neighbourhood Plan 2021**

Policy CCW1 – gives support to proposals identified for their Housing Site Availability during the period 2015-2026

Policy CCW2 – supports proposals for sub-division of larger residential properties into one, two, three-bedroom dwellings

Policy CCW3 – supports proposals for housing which optimise housing delivery in accordance with guidance contained in the Urban Capacity Study and outlines density range of 30-55 dwellings per hectare for land not covered in the Urban Capacity Report.

Policy CCW4 – sets out that development is expected to preserve and enhance the character of the area in which it is located.

Policy CCW5 – sets out that development proposals which integrate well with their surroundings, meet the needs of residents and minimise impact on the local environment will be supported where they demonstrate high quality of design and accord with the criteria of this policy.

Policy CCW6 – support proposals which incorporate measures to deliver environmentally sustainable design to reduce energy consumption and mitigate effects of climate change in line with building design measures contained in the policy.

Policy CCW7 – supports proposals which provide incubator/start-up business space and/or establishes enterprise/business park developments.

Policy CCW8 – resists the loss of local and neighbourhood convenience shops unless justification is present on viability grounds. Proposals to improve the quality and appearance of shop fronts and signage will be supported which have regards to CCW6.

Policy CCW9 – proposals for recreational and tourism development including a Visitor Centre will be supported where the criteria of this policy are met. Proposals for the improvement of signage for local facilities will be supported provided they integrate with their surroundings.

Policy CCW10 – supports development proposals which do not have a significantly detrimental impact on locally significant views as listed/mapped in the Neighbourhood Plan (Figures 7.1, 7.2-7.5, with detailed descriptions in Appendix A).

Policy CCW11 – sets out that there are 22 areas designated as Local Green Spaces on the policies map for the Neighbourhood Plan. Proposals which demonstrably accord with development appropriate in the Green Belt will be supported.

Policy CCW12 – proposals for provision of allotments and/or community growing spaces will be supported where accessible and within/adjacent to defined settlement areas. The loss of such space will not be supported unless alternative and equivalent provision is provided.

Policy CCW14 – encourages proposals for new/improved community facilities where criteria in the policy are met. The loss of such facilities will only be supported if alternative and equivalent facilities are provided.

Policy CCW15 – proposals for the expansion of existing public houses to develop appropriate community-based activities will be supported subject to compliance with other relevant policies and provide the design is in keeping with local character/distinctiveness. Proposals for the change of use of public houses will only be supported if the use is demonstrably unviable.

Policy CCW16 – supports proposals for provision of both traditional consecrated and green/woodland burial sites provided the criteria of this policy are met.

Policy CCW17 – supports proposals which facilitate or enhance the delivery of health services on a pre-set list of sites (contained within the policy), except for those within the Green Belt. Proposals for relocation/expansion of health services will be supported where they satisfy the criteria of this policy.

Policy CCW18 – except on Green Belt land, proposals which facilitate and enhance existing schools and associated playing fields will be supported subject to compliance with the criteria in this policy (sub-paragraph A). Proposals for new schools will be supported where they satisfy the criteria of this policy (sub-paragraph B).

Policy CCW19 – supports new residential, commercial and community development proposals being served by superfast broadband (fibre-optic). Where this is not possible, practical or viable, the development should incorporate ducting for potential future installation.

### **Supplementary Planning Documents (SPDs) and Supplementary Planning Guidance (SPGs)**

SPG (Lingfield Village Design Statement), adopted in January 2002, seeks to ensure that the village retains its individuality and character through future development both large and small. It provides general guidelines for new development and requires amongst other things that the design of new buildings should be sympathetic to the style of buildings in the locality both in size and materials.

SPG (Woldingham Village Design Statement) adopted in September 2005 provides guidance for development within Woldingham. Residential extensions should respect the size and proportions of the original house and plot. Boundary treatments should maintain the rural street scene, imposing entrances are out of keeping, and front boundaries should be screened with plantings or have low open wooded fences.

SPD (Woldingham Design Guidance) adopted March 2011 and seeks to; promote good design, protect and enhance the high quality character of the area, and to apply design principles on a sub-area basis to maintain and reinforce character.

SPD (Harestone Valley Design Guidance) adopted March 2011 and seeks to; promote good design, protect and enhance the high quality character of the area, and to apply design principles on a sub-area basis to maintain and reinforce character.

SPD (Tandridge Parking Standards) adopted September 2012 sets out standards for residential and non-residential vehicular parking and standards for bicycle parking.

SPD (Tandridge Trees and Soft Landscaping) adopted November 2017 sets out the Council's approach to the integration of new and existing trees and soft landscaping into new development, and seeks to ensure that trees are adequately considered throughout the development process.

## **National Advice**

The National Planning Policy Framework (NPPF) constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications. It sets out the Government's planning policies for England and how these are expected to be applied. It states that there are three dimensions to sustainable development: economic, social and environmental, and confirms the presumption in favour of sustainable forms of development which it states should be seen as a golden thread running through both plan-making and decision-taking.

The Government has also published national Planning Practice Guidance (PPG) which is available online and covers a number of policy areas and topics.

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## ITEM – 5.1

**Application:** 2022/841

**Location:** Divers Cove North Park Lane Godstone RH9 8ND

**Proposal:** Variation of condition 8 (Approved operating times) to extend opening times, attached to pp 2015/1122 for the "Change of use of land to diving centre (Class D2) with associated ancillary portacabins and car parking"

**Ward:** Bletchingley and Nutfield / Godstone

*Constraints* -Biggin Hill Safeguarding, Biodiversity Opportunity Area, Gatwick Safeguarding, Green Belt, Ground Water Protection, Historic Landfill, Surface Water Flood Risk

### **RECOMMENDATION:**

**PERMIT subject to conditions**

1. This application is reported to Committee following a Member request for a 'call-in' to consider the impact on the residential amenity of the neighbouring properties.

### **Summary**

2. This application seeks to vary condition 8 of planning permission 2015/1122 which currently restricts open water swimming as follows:

*The use of the site for open water swimming shall not take place other than between the hours of 1 May -30 September, Monday to Friday 9am to 11 am and 4pm to 8pm, Saturday, Sundays and Bank Holidays 9am to 11am and 4pm to 8pm. 1 October – 30 April Monday to Friday 09:30am to 11:30am and 2pm to 6pm, Saturdays, Sundays and Bank Holidays 09:30am to 11:30am and 2pm to 4pm.*

The proposed variation to the condition seeks to increase the hours of operation to 01 December to 31 March: 8am to 4pm; 01 April to 30 September: 6am to 10pm; and 01 October to 30 November: 6am to 8pm.

3. The proposed variation of condition as is now considered would have some additional impact on the amenity of the neighbours by virtue of noise over an extended period. However, on balance, it is considered that the level of harm to residential amenity would not be so significant as to warrant a refusal of the application and as such the proposal would accord with Policy CSP18 of the Council's Core Strategy 2008, Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 in accordance with paragraph 185 of the NPPF.
4. Other material planning considerations in terms of highway safety, ecology, health and wellbeing and local economy are also considered to be acceptable and in accordance with these relevant policies.
5. On balance, this report recommends approval for the variation of condition 8 as outlined above.

### **Site Description**

6. The application site consists of the east reservoir and its associated land formally part of the North Park Quarry and now known as Divers Cove. The site lies within the Green Belt and forms part of a biodiversity opportunity area. Access is gained

to the site from the north-west via a quarry road and access track from North Park Lane.

7. The site is predominately covered by open water with mature and established vegetation to each side albeit thinner to the eastern edge. An office, changing rooms and hot tub lie to the north-west corner of the site with saunas and a changing area formed on the beach to the west of the reservoir.
8. The settlement of Godstone lies to the east of the site with some properties within Dumville Drive, Clayton Mead and Greenwell Close bordering the site to the east. Public Right of Way 122 runs to the western boundary of the site with an unclassified access path to the north.

### Relevant History

9. The application site has a detailed history formally forming part of the North Park Quarry. In 2012 permission was granted for the change of use to a Class D2 leisure and entertainment use as a dive centre. Below is a summary of the relevant planning history in relation to its leisure uses and key information from each of the permissions:
10. TA/2012/905- Change of use of land to diving centre (class d2) with associated ancillary portacabins and car parking- **Approved** (17/12/2012).

Comments: Conditions imposed for the use of the site for diving only. Hours of use restricted to 1 May -31 September, Monday to Friday 08:30am to 6:30 pm, Saturday, Sundays and Bank Holidays 9am to 6:30 pm. 1 October – 30 April Monday to Friday 09:30am to 4:30 pm, Saturdays, Sundays and Bank Holidays 09:30 am to 4:30 pm.

11. TA/2013/1134- Erection of 2x diving pontoons. (part retrospective)- **Approved** (25/11/2013)
12. TA/2013/1495- Variation of condition 8 of permission ta/2012/905 dated 17 December 2012 to allow for the use of the site for open water swimming sessions- **Approved** (09/12/2013)

Comments: Condition 8 varied to 'The site shall be used for diving and open water swimming purposes and for no other purpose...'. Additional conditions imposed. Condition 14 restricts the hours of use for open water swimming to; 1 May -31 September, Monday to Friday 9am to 11 am, Saturday, Sundays and Bank Holidays 4pm to 6pm. 1 October – 30 April Monday to Friday 09:30am to 11:30am, Saturdays, Sundays and Bank Holidays 2pm to 4pm. Condition 15 restrict the open water swimming to the areas as shown on approved plan.

13. TA/2015/1122- Variation to condition 14 of planning application TA/2013/1495 to allow for increased open water swim times (weekday evening's 4-8PM, 6-8pm weekends and 9-11 am weekends).(Amended description referring to condition 14 rather than 4)- **Approved** (14/09/2015)

Comments: Condition 3 in relation to hours of use of the reservoir amended to include (other than its use for open water swimming in accordance with condition 8). Condition 8 varied to; The use of the site for open water swimming shall not take place other than between the hours of 1 May -30 September, Monday to Friday 9am to 11 am and 4pm to 8pm, Saturday, Sundays and Bank Holidays 9am to 11am and 4pm to 8pm. 1 October – 30 April Monday to Friday 09:30am



to 11:30am and 2pm to 6pm, Saturdays, Sundays and Bank Holidays 09:30am to 11:30am and 2pm to 4pm.

14. TA/2016/558- Variation of condition 15 of planning application TA/2013/1495 to allow for the alteration of the swim route to the perimeter of the lake to provide a safer and more discreet environment- **Approved** (01/07/2016)
15. TA/2020/720- Re grading outside changing area, extension of access to water entry point and new benched seating (retrospective)-**Approved** (14/08/2020)

### Proposal and Key Issues

16. This application seeks to vary the terms of the approved open water swimming hours as imposed under condition 8 of planning permission 2015/1122. For ease of reference the table below shows the currently approved hours and those proposed as part of this current submission. Please note that clarification has been sought from the applicant by e-mail dated 19<sup>th</sup> September 2022 in relation the specific dates in which the hours would apply to ensure that any condition would meet the relevant tests set out within paragraph 56 of the NPPF. In addition, this application is no longer considering additional events (night swims) as referenced within the application forms.
17. This application therefore considers the following variation of hours:

Hours as approved under TA/ 2015/1122		Proposed Variation	
1 May – 30 September		01 December to 31 March	8am to 4pm
Monday to Friday	9am to 11am and 4pm to 8pm	01 April to 30 September	6am to 10pm
Saturdays, Sundays and Bank Holidays	9am to 11am and 4pm to 8pm	01 October to 30 November	6am to 8pm
1 October – 30 April			
Monday to Friday	09:30am to 11:30am and 2pm to 6pm		
Saturdays, Sundays and Bank Holidays	09:30am to 11:30am and 2pm to 6pm		

18. As a Section 73 application to vary a planning permission the key issues to consider are those that are relevant to the variation proposed. The principle of the development or other factors associated with the permission cannot be considered if they are not directly impacted by the variation. Any other condition on the previous permission will be re-imposed.
19. This application seeks to vary the hours permitted for open water swimming and the key consideration is whether the variation of this condition to longer hours would adversely impact on the residential amenity of the nearby neighbours. Other matters that have been raised through the public consultation are the impact on ecology, highway, community benefit and local economy.

## **Development Plan Policy**

20. Tandrige District Core Strategy 2008– Policies CSP1, CSP2, CSP7, CSP12, CSP14, CSP15, CSP17, CSP18, CSP19
21. Tandrige Local Plan Part 2 Local Plan: Part 2 – Detailed Policies 2014 – Policies DP1, DP5, DP7, DP8, DP9, DP19, DP20, DP21, DP22
22. Caterham Chaldon and Whyteleafe Neighbourhood Development Plan 2021- not applicable
23. Woldingham Neighbourhood Development Plan 2016 – not applicable
24. Limpsfield Neighbourhood Development Plan 2019 – not applicable
25. Emerging Tandrige Local Plan 2033

## **Supplementary Planning Documents (SPDs), Supplementary Planning Guidance (SPGs) and non-statutory guidance**

26. Tandrige parking standards SPD (2012)
27. Tandrige Trees and Soft Landscaping SPD (2017)

## **National Advice**

28. National Planning Policy Framework (NPPF) (2021)
29. Planning Practice Guidance (PPG)

## **Statutory Consultation Responses**

30. Bletchingley Parish Council: No objection
31. Godstone Parish Council: After considering the application, noting the comments submitted online, and considering concerns raised by local residents with the Parish Council, the Parish Council OBJECTS to this application. A number of residents have raised that the noise from the site already impacts their lives and ability to enjoy their gardens and homes (particularly when windows are open), with the current level of noise very audible and unacceptable at times. The Parish Council objects to the application due to the increase in the noise disturbance to the local residents adjacent to the site and concern that the increase to hours is excessive and will increase the disruption caused to local residents. Please consider the impact on residents that live near the site and will be directly effected by the application, and the potential noise and disruption over a 16 hour period every day, 7 days a week, 6 months of the year. There is no indication of how nuisance to neighbours will be controlled and what action would be taken if issues arise. The Council note that the activity on the site has grown considerably from the initial set up and conditions of use are breached, for example the use of lights at the site. The Parish Council always wants to be an advocate of local business, but do not feel it should be to the detriment of local residents

## TDC advice

32. Environmental Health: No objections on Environmental Health grounds.

32a. Third Party Comments

### OBJECTIONS

#### Residential Amenity

- Noise and disturbance from swimming and people congregating
- Hours would impact residents
- Impact on ability to enjoy restful sleep
- Activity prior to 8am is not reasonable
- Potential of 16 hours of operation not reasonable
- No indication of respite/break during proposed hours
- Loss of privacy

#### Highways

- Increase in traffic
- No parking management indicated

#### Ecology/Environment

- Increased impact on local wildlife
- Increased erosion of cove
- Would impact on reservoir as nature reserve

### SUPPORT

#### Health/Wellbeing

- Increased/extended accessibility to open water
- Physical and Mental Health benefits
- Encouragement of outside activities

#### Local Economy/ Community

- Valuable resource to local community
- Demand from local community/ greater choice of times/ access
- Support local business

## Assessment

33. This application seeks to vary condition 8 of planning permission 2015/1122 in relation to the hours of open water swimming. As above the key issues has been identified as the impact on the amenity of neighbours. Other issues have been raised as part of the public consultation including highways, ecology, social and local economic considerations. This report will address each of these identified issues before concluding on the acceptability of the variation of condition.

### Residential Amenity

34. Policy DP7 of the TDC Local Plan states proposals should not significantly harm the amenity of neighbouring properties by reason of pollution (noise, air or light), traffic, or other general disturbance. Furthermore, proposal should not significantly harm the amenities and privacy of occupiers of neighbouring properties (including their private amenity space) by reason of overlooking or its

overshadowing or overbearing effect. Policy CSP 18 of the TDC Core Strategy states that development must not significantly harm the amenities of the occupiers of neighbouring properties by reason of overlooking, overshadowing, visual intrusion, noise, traffic and any other adverse effect.

35. Paragraph 185 of the NPPF is also relevant and sets out that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should: a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.
36. The application site at present has permission for the use for open water swimming with the hours restricted by the latest variation to condition 8 under the 2015 permission, as shown in the table at paragraph 17 of this report. This permits 2 hours of swimming within the morning and 4 hours within the afternoon with the times varying depending on the time of year with the earliest and latest opening and closing being 9am and 8pm respectively. The use of the site for open water swimming is not in itself an intrinsically noisy activity compared to other Class D2 assembly and leisure uses. However, it has to be acknowledged that some noise is likely to be generated from the use of the site when entering/leaving the water, voices of the users of the site and traffic noise arriving and leaving. These noises, particularly given the more open nature of the eastern boundary of the site could impact on the adjacent neighbours to the site. It should be noted that there are no mitigation measures or controls imposed on noise on the previous permission beyond the hours restrictions.
37. The current proposal seeks to widen the hours of operation of the open water swimming on the site firstly by removing the requirement to cease the use during the middle of the day and secondly to widen the hours of use to a maximum of 6am to 10pm. The applicant through their e-mail dated 19<sup>th</sup> September 2022 has sought to clarify the variation is sought to give scope as a business to operate open water swimming. They seek to clarify that they would not be able to operate swimming for the full proposed hours due to operating costs and will instead restructure their opening hours to meet the increasing demand. The intention of the applicant is noted and it is acknowledged that they are not intending to operate throughout the day however by varying the condition as proposed it could give scope in the future to all day opening if the applicant or a future occupier of the site so wished. That as a worse case scenario for amenity impact therefore needs to be considered.
38. The use of the site at present will have some impact on the amenity of the neighbouring properties particularly during the summer months when demand is likely to be higher and neighbours will have windows open or use their gardens more regularly. The increase in operating hours both in terms of opening and closing times and the number of hours during the day they are permitted to allow open water swimming will undoubtedly have some additional impact on the amenity of those properties that lies to the east of the site. The site is however unlikely to be operated at full capacity throughout the day and the extended opening and closing times are not considered to be unreasonable. Traffic noise is also likely to be extended over a longer period but is not considered to be at a level of harm which would unreasonably impact on neighbouring amenity. The Council's Environmental Health Officer has been consulted on the application and are raising no objection on environmental health grounds. On balance, whilst as

above there is likely to be some additional impact on amenity as a result of the proposed variation of condition 8 this impact is not considered to be so significant to warrant refusal against Policy DP7, CSP18 and Paragraph 185 of the NPPF.

### Highways

39. Policy CSP12 of the Core Strategy advises that new development proposals should have regard to adopted highway design standards and vehicle/other parking standards. Criterion 3 of Policy DP7 of the Local Plan also requires new development to have regard to adopted parking standards and Policy DP5 seeks to ensure that development does not impact highway safety. Paragraph 111 of the NPPF advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
40. The acceptability of the leisure use of the site under its current permitted hours was assessed as part of the previous applications and therefore has been considered. This application seeks to further increase the hours of operation with the access and parking arrangements remaining the same. The use of the site for longer hours would result in traffic entering and leaving the site over a longer period and therefore likely overall increased traffic levels however not to a significant degree. This variation is therefore not considered to offend the above relevant policies.

### Ecology

41. Policy CSP17 sets out that development proposals should protect biodiversity and provide for the maintenance, enhancement, restoration and, if possible, expansion of biodiversity, by aiming to restore or create suitable semi-natural habitats and ecological networks to sustain wildlife in accordance with the aims of the Surrey Biodiversity Action Plan. (34) Policy DP19 is also relevant and outlines that there will be a presumption in favour of development proposals which seek to: 1. Protect, enhance or increase the provision of, and access to the network of multi-functional Green Infrastructure (GI); 2. Promote nature conservation and management; 3. Restore or create Priority Habitats; or 4. Maximise opportunities for geological conservation.
42. The variation considered by this application does not change the nature of the use of the site and there is no additional operational development proposed. Whilst the increase in the hours of the use of the site could impact on the wildlife which would use the reservoir during the quieter periods this variation cannot be considered to result in an adverse impact on ecology to a degree to resist any permission on those grounds.

### Health and Wellbeing

43. The public consultation for this planning application includes a number of references to the health and wellbeing benefits of the facilities offered at Divers Cove and how the extending of the hours of operation as proposed by this application will further deliver these benefits and allow more people to benefit from them. The National Planning Policy Framework as part of its goal to achieving sustainable development sets out at paragraph 8 the support for vibrant and healthy community as part of its social objectives. More specifically paragraph 92 sets out that planning policies and decisions should aim to achieve healthy, inclusive and safe places which: c) enable and support healthy lifestyles.

44. The development as permitted would achieve these objectives set out within the NPPF. The facility at present would already provide these benefits and therefore is not new. However, the extension to the hours as proposed would further support these benefits and therefore would support such an amendment.

#### Local Economy

45. The public consultation has also raised support for Divers Cove as a local business and the benefit it has to the local economy. In a similar vein to the above the National Planning Policy Framework as part of its economic objective to sustainable development in paragraph 8 supports building a strong, competitive economy. The variation of condition is not understood to be needed to support the long-term viability of the business and therefore cannot be said to be necessary to support the local economy, however the support for economic growth threaded through the NPPF would broadly support the scheme.

#### Conclusion

46. In conclusion, the proposed variation of condition as is now considered would have some additional impact on the amenity of the neighbours by virtue of noise and disturbance. However, on balance, even with maximum useage it is not considered to result in a level of harm to residential amenity that would warrant refusal of the application and as such the proposal is considered to accord with Policy CSP18 of the Council's Core Strategy 2008, Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 in accordance with paragraph 185 of the NPPF. Other material planning considerations in terms of highway safety, ecology, health and wellbeing and local economy are also considered to be acceptable and in accordance with these relevant policies. On balance, the proposal is therefore considered acceptable and a recommendation is made for approval.
47. The recommendation is made in light of the National Planning Policy Framework (NPPF) and the Government's Planning Practice Guidance (PPG). It is considered that in respect of the assessment of this application significant weight has been given to policies within the Council's Core Strategy 2008 and the Tandridge Local Plan: Part 2 – Detailed Policies 2014 in accordance with paragraph 213 of the NPPF. Due regard as a material consideration has been given to the NPPF and PPG in reaching this recommendation.
48. All other material considerations, including third party comments have been considered but none are considered sufficient to change the recommendation.

#### **RECOMMENDATION: PERMIT subject to the following conditions**

1. This decision refers to drawings numbered 12/1036 01 and 12/1036 02 received on 29 June 2012 and drawing numbered 12/1036 03 Revision A received on 5 July 2012 and drawing titled 'Variation to TA/2012/905' scanned on 21/10/13. The development shall be carried out in accordance with these approved drawings. There shall be no variations from these approved drawings

Reason: To ensure that the scheme proceeds as set out in the planning application and therefore remains in accordance with the Development Plan.

2. No motorised boat transport of any type shall be used on the reservoir at any time except as may be agreed in writing with the District Planning Authority.

Reason: To prevent harm to the amenities of neighbouring residential properties in accordance with Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 and Policy CSP18 of the Tandridge District Core Strategy 2008.

3. The use of the site and reservoir hereby permitted (other than for its use for open water swimming in accordance with condition 8) shall not take place other than between the hours of: -

1 May - 30 September

Monday to Friday -

8.30 a.m. to 6.30 p.m.

Saturdays, Sundays and Bank Holidays -

9 a.m. to 6.30 p.m.

1 October - 30 April

Monday to Friday -

9.30 a.m. to 4.30 p.m.

Saturdays, Sundays and Bank Holidays -

9.30 a.m. to 4.30 p.m.

No machinery shall be operated, no process shall be carried out and no deliveries shall be taken in or despatched from the site outside these times.

Reason: To ensure that the development and use hereby permitted do not prejudice the visual amenities of the area or the residential amenities of nearby residents by reason of noise or disturbance, in accordance with Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 and Policy CSP18 of the Tandridge District Core Strategy 2008.

4. No goods or materials shall be stored nor shall any machinery, plant or buildings be installed on the open parts of the site except as may be agreed in writing with the District Planning Authority.

Reason: To ensure that the development does not detract from the visual amenities and openness of the area, in accordance with Policies DP7, DP10 and DP13 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 and Policy CSP18 of the Tandridge District Core Strategy 2008

5. Details of any external lighting shall be submitted to and approved by the District Planning Authority in writing prior to any such provision on the site.

Reason: To ensure that the development does not detract from the environment of this site in accordance with Policy DP19 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 and Policy CSP17 of the Tandridge District Core Strategy 2008.

6. The site shall be used for diving and open water swimming purposes and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: To protect the amenities of this area and the amenities of nearby residents in accordance with Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 and Policy CSP18 of the Tandridge District Core Strategy 2008

7. The approved parking/turning area shall be used and retained exclusively for its designated purpose.

Reason: In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accord with Policies DP5 and DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 and Policies CSP12 and CSP18 of the Tandridge District Core Strategy 2008

8. The use of the site for open water swimming shall not take place other than between the hours of:

01 December to 31 March 8am to 4pm  
01 April to 30 September 6am to 10pm  
01 October to 30 November 6am to 8pm

Reason: To ensure that the development and use hereby permitted do not prejudice the residential amenities of nearby residents by reason of noise or disturbance, in accordance with Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 and Policy CSP18 of the Tandridge District Core Strategy 2008.

9. The open water swimming activity can only be carried out within the area marked out on plan titled 'Variation to TA/2012/905' scanned on 21/10/13.

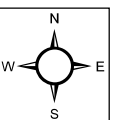
Reason: To ensure that the development and use hereby permitted do not prejudice the residential amenities of nearby residents by reason of noise or disturbance, in accordance with Policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 and Policy CSP18 of the Tandridge District Core Strategy 2008.

#### Informatives:

1. Condition 1 refers to the drawings hereby approved. Non-material amendments can be made under the provisions of Section 96A of the Town and Country Planning Act 1990 and you should contact the case officer to discuss whether a proposed amendment is likely to be non-material. Minor material amendments will require an application to vary condition 1 of this permission. Such an application would be made under the provisions of Section 73 of the Town and Country Planning Act 1990. Major material amendments will require a new planning application. You should discuss whether your material amendment is minor or major with the case officer. Fees may be payable for non-material and material amendment requests. Details of the current fee can be found on the Council's web site.

The development has been assessed against Tandridge District Core Strategy 2008 Policies CSP12, CSP13, CSP15, CSP17, CSP18, CSP21 and CSP22, Tandridge Local Plan: Part 2: Detailed Policies – Policies DP1, DP5, DP7, DP10, DP13, DP18, DP19, DP21 and DP22 and material considerations, including third party representations. It has been concluded that the development, subject to the conditions imposed, would accord with the development plan and there are no other material considerations to justify a refusal of permission.





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## ITEM – 5.2

**Reference No.:** 2021/75 (original application number)  
**Site:** Oldencraig, Tandridge Lane, Lingfield, Surrey, RH7 6LL  
**Proposal:** Deed of Variation to Section 106 Agreement associated with planning permission for Demolition of existing buildings and erection of 22 dwellings with associated parking and amenity space  
**Ward:** Godstone  
**Decision Level:** Committee

*Constraints- GB, BOA, Local Nature Reserve, Public footpath 251, SSSI within 50m (Blindley Heath), Commons and Village Greens, ASAC, EA Flood Zones 2 & 3, Updated Flood map for surface water 30, 100, 1000, B Road (The Common) and C (Tandridge Lane)*

**RECOMMENDATION:** **AGREE to Deed of Variation to S106 Legal Agreement**

### Summary

Planning permission for the redevelopment of this site for 22 dwellings was originally granted on 9 June 2020 under planning ref. 2019/330 and this required that 4 of the dwellings would be allocated as affordable housing units on a shared ownership/equity basis and secured by a Section 106 (S106) Agreement. A previous Deed of Variation to the S106 Agreement was made on 14 July 2021 to link it to an application (ref. 2021/75) which sought variations to the earlier permission in terms of the design and house types and minor repositioning of building footprint. This did not change the affordable housing requirements for 4 dwellings on a shared ownership/equity basis.

This current request for a variation to the S106 Agreement solely relates to changing the prescribed tenure from low-cost home ownership (in the form of shared equity) to low-cost home ownership (in the form of discounted market sale). The units will still be homes to buy at below market value and that is an approach supported by the Council's Housing Development Team. From a planning perspective, 'discounted market sales housing' is included within the definition of what constitutes 'affordable housing' within the National Planning Policy Framework (NPPF), and as such this proposal is in-line with national policy.

The proposed S106 Deed of Variation would have no other impacts on the approved development in terms of Green Belt, character and appearance, residential amenities, trees or highways matters.

All other matters have been previously approved and there are no material reasons for a different conclusion to be reached on them. As such, this proposal is recommended for approval.

### Site Description

Oldencraig is a former equestrian centre located to the west side of Tandridge Lane within the Green Belt. The broadly L-shaped site comprises a thick vertical stem to the west (rear) of dwellings lining Tandridge Lane and to the east of 1 and 2 Homer Cottage to the west. The base of the L-shaped site extends eastward to the south of Oldencraig Cottage and includes the access drive and a pond and field to the south.

The buildings making up the former equestrian centre are primarily situated to the centre of the site between Oldencraig Cottage to the east and 1 and 2 Homer Cottage to the west. To the north of the buildings is a manege and outdoor sand school and a gallop is located to the northernmost section of the site. Two further maneges are located to the southwest of the buildings and the south of the site.

The area is rural in character with sparse clusters of development (mainly lining the road) made up primarily of residential dwellings of varied form and period. To the south of the site is Blindley Heath Common, which is a Site of Special Scientific Interest (SSSI) and a Local Nature Reserve. A majority of the site is situated within Flood Zones 2 and 3.

Public footpath 251 runs alongside the access drive and through the site. An application to re-direct the footpath has been approved by the County Rights of Way authority but works to effect this change are yet to be carried out.

### **Relevant History**

The site has a complex history as an established riding centre. The most relevant are:

2017/1296: Redevelopment of the site to include the erection of nine two-storey dwellings offering five- and six-bedroom accommodation with associated drives and landscaping. Access would be via the existing site entrance from Tandridge Lane. Approved.

2019/330: Demolition of existing buildings and erection of 22 dwellings with associated parking and amenity space - Approved. Conditions for external materials and ecological have been approved (2019/330/Cond1 and 2019/330/Cond2).

2021/75: Variation of Condition 2 (plans) of planning permission ref: 2019/330 (Demolition of existing buildings Erection of 22 dwellings with associated parking and amenity space) to allow for amendments to the design and house types and minor repositioning of building footings. Approved on 14 July 2021, including Deed of Variation to S106 Agreement

### **Proposal**

The request for a deed of variation to the S106 Agreement solely relates to changing the 'affordable housing' definitions in terms of tenure from low-cost home ownership (in the form of shared equity) to low-cost home ownership (in the form of discounted market sale).

### **Key Issues**

The key issue in this case is whether it is appropriate to agree to a change in the definition of 'affordable housing' prescribed in the current S106 Agreement from low-cost home ownership (in the form of shared equity) to low-cost home ownership (in the form of discounted market sale).

### **Development Plan Policy**

Tandridge District Core Strategy 2008– Policies CSP1, CSP4, CSP7, CSP11, CSP12, CSP13, CSP14, CSP15, CSP18, CSP19, CSP22 and CSP23.

Tandridge District Local Plan 2 – Policies DP1, DP2, DP5, DP7, DP10, DP13, DP18, DP20, DP21, and DP22.

Emerging Tandridge Local Plan 2033 – Policies TLP01, TLP02, TLP04, TLP06, TLP10, TLP11, TLP17, TLP19, TLP35, TLP37, TLP38, TLP43, TLP45, TLP46, TLP48, TLP49, TLP50.

### **Supplementary Planning Documents (SPDs), Supplementary Planning Guidance (SPGs) and non-statutory guidance**

Tandridge Parking Standards SPD (2012)

Tandridge Trees and Soft Landscaping SPD (2017)

Lingfield Village Design Statement (SPG) (section on 'Approaches').

Surrey Design Guide (2002)

### **National Advice**

National Planning Policy Framework (NPPF) (2019) – particular reference to Annex 2: Glossary 'Affordable Housing' definition.

Planning Practice Guidance (PPG)

National Design Guide (2019)

### **Statutory Consultation Responses**

None consulted

### **Non-statutory Advice Received**

None consulted.

### **TDC Advice**

Housing Development Team – support the change to the definition of affordable housing in this case.

### **Other Representations**

None consulted.

### **Assessment**

This request for a variation to the S106 Agreement solely relates to changing the tenure for the 4 affordable housing units (of a scheme of 22 dwellings) to be provided as part of the wider development of this site from low-cost home ownership (in the form of shared equity) to low-cost home ownership (in the form of discounted market sale). The units will still be homes to buy at below market value and that is an approach supported by the Council's Housing Development Team.

From a planning perspective, 'discounted market sales housing' is included within the definition of what constitutes 'affordable housing' within the National Planning Policy Framework (NPPF) Annex 2: Glossary; which states the following:

**Affordable housing:** housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes **shared ownership**, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement. Air quality management areas: Areas designated by local authorities because they are not likely to achieve national air quality objectives by the relevant deadline.

Accordingly, the proposed change is considered acceptable from a planning perspective as it would remain within the definition of what constitutes 'affordable housing' in-line with national policy.

The proposed S106 Deed of Variation would have no other impacts on the approved development in terms of Green Belt, character and appearance, residential amenities, trees or highways matters.

All other matters have been previously approved and there are no material reasons for a different conclusion to be reached on them. As such, this proposal is recommended for approval.

### Conclusion

This current request for a variation to the S106 Agreement solely relates to changing the tenure from low-cost home ownership (in the form of shared equity) to low-cost

home ownership (in the form of discounted market sale). The units will still be homes to buy at below market value and that is an approach supported by the Council's Housing Development Team. From a planning perspective, 'discounted market sales housing' is included within the definition of what constitutes 'affordable housing' within the National Planning Policy Framework (NPPF), and as such this proposal is in-line with national policy.

The proposed S106 Deed of Variation would have no other impacts on the approved development in terms of Green Belt, character and appearance, residential amenities, trees or highways matters.

All other matters have been previously approved and there are no material reasons for a different conclusion to be reached on them. As such, this proposal is recommended for approval.

The recommendation is made in light of the National Planning Policy Framework (NPPF) and the Government's Planning Practice Guidance (PPG). Significant weight has been given to policies within the Council's Core Strategy 2008 and the Tandridge Local Plan: Part 2 – Detailed Policies 2014 in accordance with paragraphs 214 and 215 of the NPPF. Due regard as a material consideration has been given to the NPPF and PPG in reaching this recommendation.

All other material considerations have been considered but none are considered sufficient to change the recommendation.

**RECOMMENDATION:**                      **AGREE to the Deed of Variation to S106  
Legal Agreement**

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## APPENDIX 1

THIS DEED OF AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2022

BETWEEN THE DISTRICT COUNCIL OF TANDRIDGE of COUNCIL OFFICES, STATION ROAD EAST, OXTED, SURREY RH8 0BT (“the Council”) of the first part and Chartwell Land & New Homes Ltd (Co Reg No 07271557) of Unit 5a Fircroft Business Centre, Fircroft Way, Edenbridge, Kent, TN8 6EN (“the Owner”) of the second part and Barclays Bank PLC (Co Reg No 01026167) whose address for service is Lending Operations, PO Box 299, Birmingham, B1 3PF (“the Mortgagee”) of the third part

### WHEREAS

- (1) THE Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended (“the Act”) for the area within which the Land hereinafter referred to is situated.
- (2) THE Owner owns the freehold interest in the land at Oldencraig, Tandridge Lane, Lingfield, Surrey RH7 6LL edged red on the plan at Annex 1 hereto and registered at HM Land Registry with title absolute under title numbers SY630426 and (amongst other land) SY851022 (the “Land”).
- (3) The Mortgagee has a legal charge over the Land following the grant of a security on 14<sup>th</sup> January 2022.
- (4) By a Deed of Agreement under Section 106 of the Act made on the 9<sup>th</sup> day of June 2020 between the Council and the Owner (the “Original Agreement”), the Owner covenanted to observe certain covenants restrictions and obligations regulating the use of the Land; and on the same day planning permission was granted under reference TA/2019/330 by the Council to develop the Land by the Owner (the “Original Permission”).
- (5) The Original Agreement was varied in support of an application given application number TA/2021/75 on 14<sup>th</sup> July 2021 (“2021 Variation”).
- (6) Planning permission TA/2021/75 has been implemented and the Council, the Owner and the Mortgagee have now agreed to the further variation of the 2021 Variation in the manner set out in this deed.

NOW THIS AGREEMENT WITNESSETH as follows:

- (1) This Agreement is made pursuant to Sections 106 and 106A of the Act.

- (2) This Agreement shall come into effect upon the date of its execution.
- (3) It is hereby agreed that the expressions “the Council” and “the Owner” and “the Mortgagee” shall include their respective successors in title and assigns and as regards the Council shall include any Local Authority successor.
- (4) The Owner hereby covenants with the Council to pay on demand the Council’s reasonable costs of and incidental to the preparation and completion of this Agreement.
- (5) This Agreement shall be registrable as a Local Land Charge.
- (6) Variation of the Original Agreement as varied by the 2021 Variation.**

The Council and the Owner and the Mortgagee agree that the Original Agreement as varied by the 2021 Variation shall be further varied as follows:

- (6.1) The Owner covenants with the Council in the terms set out in Schedule 1 with the intent that the covenants given in respect of each Discounted Market Sales Unit shall apply to and be capable of enforcement at all times against that Discounted Open Market Sales Unit only and not against any other land.
- (6.2) The Council covenants with the Owner in the terms set out in Schedule 2 with the intent that the covenants given in respect of each Discounted Market Sales Unit shall apply to and be capable of enforcement at all times against that Discounted Open Market Sales Unit only and not against any other land.
- (6.3) The Council and the Owner agree that the treatment of affordable housing in the development of the Land is set out comprehensively in this Agreement and consequently the covenants contained in Schedule 1 and Schedule 2 of the Original Agreement as varied by the 2021 Variation shall be of no further effect: and that the affordable housing obligations necessary to make the development comprised in planning permission TA/2021/75 acceptable are enforceable only against that part of the Land defined as the Affordable Housing Land and not otherwise against the Land.
- (7) The Mortgagee consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed. Save that the Mortgagee shall not be personally liable for any breach of obligation contained in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any

part of the Land in which it has an interest in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

- (8) Save as aforesaid the provisions of the Original Agreement as varied by the 2021 Variation shall continue to have effect.

## **Schedule 1**

In this Schedule, the following terms shall have the following meanings (and otherwise the terms set out in the Original Agreement shall apply):

**“Affordable Housing”** means housing for sale to households whose needs are not met by the market and which:-

- a. meet the needs of eligible households, who the Local Planning Authority could reasonably expect to occupy this Development having regard to the Discounted Market Sales Unit Allocation Mechanism; and
- b. include provision for ensuring the Discounted Market Sales Units remain at a discount for future eligible households;

**“Affordable Housing Land”** means the land edged blue on Plan 3 attached to the 2021 Variation and reattached on the following page for reference;

**“Chargee”** means a mortgagee or chargee of the registered proprietor of a Discounted Open Market Sales Unit (or any receiver including an administrative receiver) appointed by such mortgagee or chargee pursuant to either the Law of Property Act 1925 or appointed under security documentation or any other person appointed under any security documentation to enable such mortgagee or chargee to release its security;

**“Discounted Market Home Owner”** means a person who is the registered proprietor of a Discounted Market Sales Unit according to the Discounted Market Sales Unit Allocation Mechanism;

**“Discounted Market Sales Unit Allocation Mechanism”** means the document at Annex 1 setting out with regard to local incomes and local house prices the eligibility criteria which a Discounted Market Home Owner must satisfy in order to purchase a Discounted Open Market Sales Unit;

**“Discounted Market Sales Units”** means the four Dwellings to be provided on the Affordable Housing Land together with associated car parking spaces and gardens / amenity land as part of the Development pursuant to the Planning Permission or any one of those Dwellings as the context requires and which are to be disposed of to Discounted

Market Home Owners at not less than the Discounted Value subject to the terms of this Deed and the terms "DMS Unit" and "DMS" shall be construed accordingly;

**"Discounted Value"** means in the case of a house a price 25% less than the Open Market Value and in the case of a flat a price 30% less than the Open Market Value;

**"Disposal"** means a transfer of a Discounted Market Sales Unit and all like uses of "Disposal" shall be construed accordingly;

**"Open Market Units"** means those Dwellings which are not Discounted Market Sales Units, and all like uses of "Open Market Units" shall be construed accordingly;

**"Open Market Value"** means the price which the whole interest in a Discounted Market Sales Unit could be expected to command if sold by a willing vendor to a willing purchaser on the open market for residential purposes;

**"Responsible Officer for Housing"** means the Council's head of housing or such other person as the Council's Chief Executive may nominate in his or her place from time to time.

### **1. Affordable Housing**

- 1.1. To provide the Discounted Market Sales Units in accordance with this Deed.

### **2. Provision of Information**

- 2.1. To keep the Responsible Officer for Housing reasonably informed of key progress of negotiations to transfer the Discounted Market Sales Units prior to their First Occupation and to promptly provide the Responsible Officer for Housing with such information and supporting evidence as he or she may reasonably request.

### **3. Provisions relating to Affordable housing**

- 3.1. Not other than with the consent in writing of the Council to transfer the Discounted Market Sales Units except:
  - i. at a price reflecting the Discounted Value; and

- ii. on terms ensuring that the Discounted Market Sales Unit shall remain as a Discounted Market Sales Unit for future eligible households in perpetuity.

#### **4. Disposals of Discounted Open Market Sales Units**

- 4.1. Not other than with the consent in writing of the Council to Dispose of a Discounted Market Sales Unit except to a person meeting the eligibility criteria set out in the Discounted Market Sales Unit Allocation Mechanism.
- 4.2. Not other than with the consent in writing of the Council to Dispose of a Discounted Market Sales Unit unless the registered proprietor of that Discounted Market Sales Unit has provided the Council with not less than 10 days' written notice of their intention to Dispose of a Discounted Market Sales Unit which shall comprise:
  - 4.2.1. written notice of the agreed sale price which shall be no greater than the Discounted Value;
  - 4.2.2. a certificate signed by a member of the Royal Institute of Chartered Surveyors (RICS) attesting to the red book assessment of: (1) the Open Market Value of the Discounted Market Sales Unit (on the basis that it was an Open Market Unit); and (2) the Discounted Value of the same.
- 4.3. Not to Dispose of a Discounted Market Sales Unit unless on Disposal a restriction is entered (or subsists as the context requires) on the title register of the Discounted Open Market Sales Unit in the following form or in words to similar effect:

*“No disposition of the registered estate is to be registered without a certificate signed by Tandridge District Council that the Discounted Open Market Sales Unit provisions of the Section 106 Agreement dated [                    ] have been complied with.”*

#### **5. Chargee Clause**

- 5.1. Prior to seeking to dispose of a Discounted Open Market Sales Unit pursuant to any default under the terms of its mortgage or charge (the

“Charged Property”) the Chargee shall serve a prior written notice including evidence and written confirmation of the default (the “Chargee’s Notice”) to a Council of its intention to Dispose;

5.1.1. the Chargee shall use reasonable endeavours over a period of three months from the date of service of the Chargee’s notice on the Council to complete a Disposal of the Charged Property in such a way so as to safeguard it as a Discounted Open Market Sales Unit for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation relating to the Charged Property including all accrued principal monies and interest due and reasonable costs relating to the said security documentation;

5.1.2. if such Disposal has not completed within the three month period referred to in 5.1.1 above (or such longer period as the Chargee and the Council acting reasonably may agree) the Chargee shall be entitled to dispose of the Charged Property free from the Affordable Housing provisions contained in this Deed which provisions shall determine absolutely; and

5.1.3. all parties shall engage and cooperate with each other in good faith to safeguard the Discounted Open Market Units in accordance with the Chargee’s duty.

5.2. In the event of a default under any security referred to in paragraph 5.1 or in any other circumstances warranting the intervention of any statutory body nothing in this Deed shall prevent the transfer of the Discounted Open Market Units or any one or more of them (as the case may be) to another Discounted Market Home Owner or to the Council subject to the Discounted Open Market Units remaining bound by the provisions of this Agreement.

## **Schedule 2**

In this Schedule, the terms set out in Schedule 1 of this Agreement shall apply save to the extent that Schedule 1 is silent in which case the terms set out in the Original Agreement shall apply.

1. To issue the consent in writing necessary to enable registration of a Disposal on application by an Owner from time to time of a Discounted Market Sales Unit subject to receipt of its reasonable costs.
2. To supply an account of its reasonable costs on request and at no charge to enable an Owner from time to time to seek its consent in order to enable registration of a Disposal.



# **Annex 1**

## Discounted Market Sales Unit Allocation Mechanism

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### DISCOUNTED MARKET SALE – ALLOCATION MECHANISM

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#### INTERPRETATION

The following words and expressions shall mean as follows:-

Armed Services Member	Means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
Availability Notice	means written notification to the Council by the Owner of their intention to sell the property
Compliance Certificate	A certificate of compliance issued by the Council in the form that it thinks appropriate confirming that the requirements of Paragraph 7(a) and 7(b) of this Annex of this Agreement have been complied with to be issued within twenty-eight (28) days of receiving appropriate evidence.
Eligibility Criteria	means criteria which are met if <ul style="list-style-type: none"><li>(a) The purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</li><li>(b) The purchaser's annual gross income (or in the case of a joint purchase the joint purchasers' joint annual gross income) does not exceed the Income Cap and</li><li>(c) The purchaser meets the Local Connection Criteria (or in the case of a joint purchase at</li></ul>

	<p>least one of the joint purchasers meets the Local Connection Criteria) for the scheme OR</p> <p>(d) The purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member</p> <p>NB. Additional priority will be given to applicants who meet the criteria at a-c and are currently secure tenants of the Council and the purchase of a DMS home will allow their current property to be advertised as available to households on the housing register.</p>
First Time Buyer	Means a First Time Buyer as defined by paragraph 6 of the Schedule of 6ZA to the Finance Act 2003 (as may be amended from time to time) unless otherwise agreed in writing by the Council
Local Connection Criteria	<p>Means criteria which are set out in the S106 agreement to which this Allocation Mechanism is appended OR, where none exists the criteria which are met by a person who satisfies one or more of the below</p> <p>(i) Is ordinarily resident within [*] and has been for a continuous period of not less than 12 consecutive months prior to exchange of contracts for the DMS home; and/or</p> <p>(ii) Who has a close family association with [*] by reason of a parent or child who is ordinarily resident within [*] and/or</p> <p>(iii) Who is permanently employed or has a confirmed job offer of permanent employment within [*]</p>
Maximum Sale Price	means the maximum price that the property can be marketed for and subsequently sold for as set by the Council upon receipt of the Availability Notice and valuation report.
Income Cap	means £80,000 or other such sum as may be

	published by the Secretary of State for the purpose of eligibility for low cost home ownership products and is in force at the time of the relevant disposal
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1. The property can be sold at any time, but the Owner must notify the Council in writing of their intention to sell the affordable home. This is known as an Availability Notice and should be sent to the Council's main offices or emailed to XXXXXX along with a valuation report.
  
2. Prior to marketing a discounted market sale property, the Owner will obtain a full market valuation from an independent RICS qualified surveyor and submit it to the Council for approval. The valuation report must
  - Include the date the valuation took place
  - State that the valuer is aware that the property is a DMS unit
  - Confirm the report is valid for a minimum period of 3 months
  - Include a clause that states "Tandridge District Council can rely upon the contents of this report"
  - Include comparable evidence, including the square footage of the properties, sale price and date of sale
  
3. The valuation is to be updated as necessary to ensure that it is not more than 3 months old at the time the sale is agreed.
  
4. Upon receipt of the Availability Notice and valuation report the Maximum Sale Price of the property will be calculated by the Council based on the full market valuation as described above, less the % discount that is secured on the property in accordance with the table below:

Plot Number	Postal address	Postcode	% Discount

5. The property cannot be sold at any time for more than the confirmed Maximum Sale Price.

6. Once the Maximum Sale Price is confirmed the Owner can advertise the property using their chosen method.
7. No DMS shall be disposed of (whether on a first or subsequent sale) unless and until the Council has been provided with evidence that:
  - a) the intended purchaser meets the Eligibility Criteria and has been approved by the Council
  - b) the dwelling is being disposed of as DMS at no greater than the Maximum Sale Price
  - c) the Council has issued a Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty-eight (28) days of being provided with evidence to satisfy it that the requirements at a) and b) have been met
8. The property must be sold with the same percentage discount that was received when purchasing the property.
9. The Owner covenants to comply with any S106 agreement relating to occupancy restrictions, as well as prohibiting the property from being used as a second home, sub-let or rented out or any other use than the permanent residence of the Owner.
10. Prospective buyers must be eligible for affordable housing and satisfy the following requirements a) resident or employed in Tandridge District or have a close family member who resides in the District
11. Where the property is a Rural Exception Scheme, eligible purchasers will need to demonstrate to the Council's satisfaction that they have a connection to the Parish or adjoining Parishes in accordance with the planning approval. This is usually through a live, work or family connection.
12. Where there is more than one eligible household the Council will allocate the property according to the following priority criteria:
  - Housing need for the type and size of property available
  - Connection to the town/village or parish where the available property is located
13. The Owner will be responsible for the Council's legal costs when selling the property.

IN WITNESS whereof this Agreement has been executed in manner hereinafter appearing and delivered the day and year first before written

THE COMMON SEAL of

**THE DISTRICT COUNCIL OF TANDRIDGE**

was hereto affixed in the

presence of:-

EXECUTED AS A DEED by

**CHARTWELL LAND & NEWS HOMES LIMITED**

acting by a director

.....

*Director*

In the presence of:-

Signature of witness:

Name (in CAPITAL LETTERS):

Address:

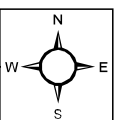
[BANK ATTESTATION CLAUSE –

BARCLAYS TO DETAIL CORRECT ATTESTATION]

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**Oldencraig**  
**Tandridge Lane**  
**Lingfield RH7 6LL**  
 2021/75



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