

## 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. Tandridge District Core Strategy 2008– Policies CSP1, CSP2, CSP7, CSP12, CSP14, CSP15, CSP17, CSP18, CSP19
21. Tandridge 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 Tandridge Local Plan 2033

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

26. Tandridge parking standards SPD (2012)
27. Tandridge 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.