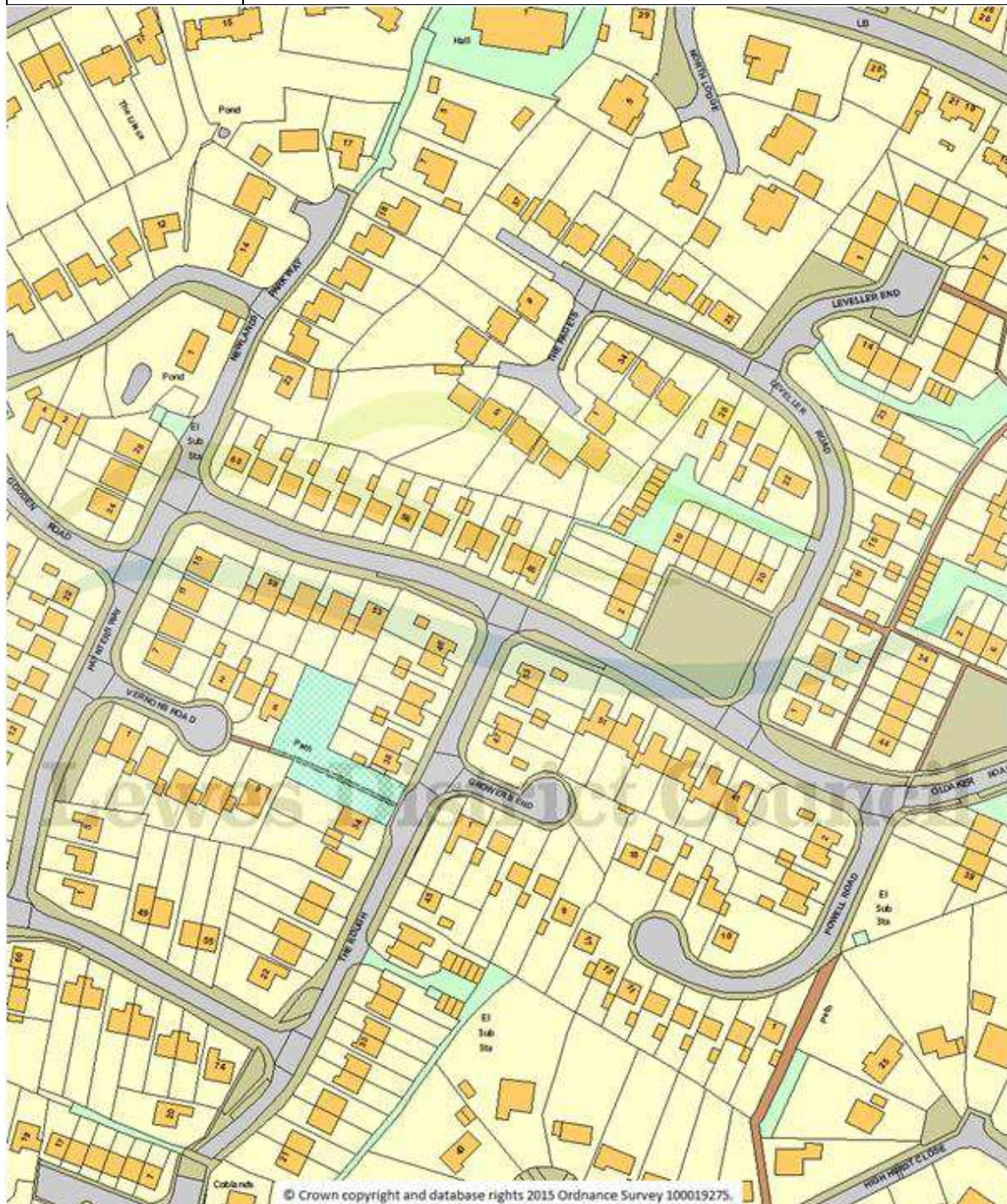


<b>APPLICATION NUMBER:</b>	LW/18/0080	<b>ITEM NUMBER:</b>	<b>10</b>
<b>APPLICANTS NAME(S):</b>	Newick Parish Council	<b>PARISH / WARD:</b>	Newick / Newick
<b>PROPOSAL:</b>	Modification of Planning Obligation for modification of agreement dated 26 April 1968 pursuant to s37 of the Town and Country Planning Act 1962 to remove restrictive covenant regarding use as a play area		
<b>SITE ADDRESS:</b>	Land Adjacent To The Rough And Vernons Road Newick East Sussex		
<b>GRID REF:</b>			



## 1. SITE DESCRIPTION / PROPOSAL

1.1. This application is seeking to secure a modification of an agreement dated 26 April 1968 pursuant to s37 of the Town and Country Planning Act 1962, specifically to remove a restrictive covenant regarding use of the site as a play area. The original planning agreement was entered into between Scalter and others (1)-(7) and The Chailey Rural District Council, prior to the grant of outline planning permission for residential estate ref. E/66/0022B on 24 May 1968. Currently, the Newick Parish Council is the freeholder of the land under title no. ESX18330.

1.2. Schedule 2, paragraph 2 of that agreement states that 'all open spaces pedestrian ways access ways enclosures and other accommodation for pedestrians and vehicles shown in the lay-out plans for the development as may be approved by the Council on behalf of the East Sussex County Council the local planning authority and not forming part of a highway maintainable at the public expense shall remain as such in perpetuity for the benefit of the occupiers of the dwellings to be erected on the remainder of the land and shall be maintained by the Owners to the satisfaction of the Council'.

1.3. This application is to vary the original agreement to allow the designation for the site within the Newick Neighbourhood Plan to be realised, given no practical utility as public open spaces, alternative open space provisions and the adaptation of the Newick Neighbourhood Plan in July 2015.

## 2. RELEVANT POLICIES

None

## 3. PLANNING HISTORY

**E/66/0022B** - Outline Application for residential estate. Restrictive Planning Condition No.13.

Site of: 014 & 016 Church Road, 001-008 (inc) & 010-018 (inc) Marbles Road, 001-012 (inc) & 014-018 (inc) Powell Road, 001-009 (inc) Growers End, 032, 034, 038, 044, 046 & 045-053 (odds) The Rough, 001-007 (inc) & 009 Vernons Road, 007-011 (odds), 015 & 010-028 (evens) Paynters Way, 001 Springfields, 001-005 (inc) & 007 Godden Road, 001-012 (inc), 014-041 (inc), 043-059 (odds) & 046-068 (evens) Oldaker Road - **Approved**

## 4. REPRESENTATIONS FROM STANDARD CONSULTEES

None

## 5. REPRESENTATIONS FROM LOCAL RESIDENTS

5.1 18 letters objecting this application have been received. The grounds for objection are:

- Historical Significance
- Contextual Significance
- Contrary to Policy
- Insufficient Information
- Loss of Open Space
- Out of character

- Overdevelopment
- Parking issues
- Traffic Generation
- Highway Safety
- Impact upon the Twitten
- Overlooking
- Effect on Wildlife
- Loss of Trees
- Noise and disturbance

5.2 In addition to that, a petition objecting this application has been received showing 112 signatures in support of retaining existing recreation use of the site.

5.3 The Council's Solicitor response in connection with petition received:

5.4 'There is a Petition Scheme that allows certain petitions to be 'presented' to the PAC as an item on the agenda, but this does not apply when the petition is in connection with a particular planning application.

5.5 This is because a difference procedure (the Public Speaking scheme) applies. The Public Speaking Scheme is far more generous in allowing up to 3 members of the public to make representations to the committee on any particular planning application, so the parties organising the petition should not be disadvantaged in any way.

5.6 The Petition will be referred to as part of the Officers report to the committee and can be referred to by the objectors should they register to speak against the proposal.'

## **6. PLANNING CONSIDERATIONS**

6.1. The application has been submitted on behalf of the land owner. The application is to vary the s37 Agreement dated 26 April 1968, which applied to an open recreation space associated with a residential estate built along Oldaker Road, Newick.

6.2. The Newick Neighbourhood Plan (NNP) identified four sites for housing - under Policy HO2, Policy HO3, Policy HO4 and Policy HO5. It was put to a referendum on 26 February 2015 and was duly made by the district council on 22 July 2015.

6.3. The application site is a 0.05 hectares (0.12 acres) area of land between The Rough and Paynters Way/ Vernons Road in Newick. Housing Policy HO5 set within the NNP specifically relates to this site. HO5.2 states that 'this site shall consist of a pair of semi-detached bungalows or houses, each with no more than three bedrooms'. The NNP has now been integrated into the local development plan and is therefore a material planning consideration, which will be referenced when deciding on planning applications in the future.

6.4. HO5.3 of the NNP says 'the twitten between The Rough and Vernons Road shall remain open to the public but, subject to the agreement of East Sussex County Council, may be diverted by a few metres to the south to allow the access road to the site to run alongside it. Any changes to the existing lay-by in The Rough, that are considered necessary by East Sussex County Council as a result of the access road, shall be carried out'. Consequently, Policy HO5 provides for housing delivery, having regard to the Framework. In so doing, the Policy contribute to the achievement of sustainable development.

6.5. The NPPF contains government advice to planning authorities where obligations (i.e. S32 or S106's) are proposed to be revised. The advice (in para 205 of the NPPF) is that "Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled".

6.6. The Newick Neighbourhood Plan has been brought into legal force, forming part of the statutory development plan for Lewes District. As such, the Plan is used when determining planning applications in the Newick Neighbourhood Area, which covers the entire parish. This complies with the statutory and legal requirements and basic conditions set out in the Localism Act 2011.

6.7. As shown during Neighbourhood Plan preparation process, the application site was protected from use unless and until other open space was provided, but that condition was met when The Manwaring Robertson Field became available as a public recreation space. This was followed by the statement that the land is unused and could be used for the construction of one large or two small dwellings. The Parish confirmed that funds received from sale of the land could be used by the Parish Council to enhance the sports or other communal facilities in Newick.

6.8. Furthermore, the applicant claims that by way of substitute open spaces there are other available sites within the locality. The King George V Playing Field has more recently acquired the immediately adjacent Manwaring Robertson Field which greatly increases the total playing field area. A skate board facility was provided on the Manwaring Robertson Field and the children's playground on the King George V Playing Field was upgraded. Then, a second children's playground would be provided at the end of the new housing development at Mantell Close as shown within the adopted Neighbourhood Development Plan (NP). Finally, the ongoing development of Reedens Meadow as a SANG would also provide a further recreational area for Newick residents.

6.9. Although numerous comments suggest that the application site has been used for recreational purposes serving as a local green space, the applicant demonstrated that there are other open green spaces within the locality. Moreover, the NNP's Assessment of Availability of Land for Housing Development shows that the Steering Group identified possible development sites by writing, on behalf of the Parish Council, to all owners of land (other than gardens) directly abutting the current development boundary; those landowners that responded were then invited to discuss with the Steering Group their aspirations for the future use of their land.

6.10. The Independent Examiner considered the submitted Sustainability Scoping Report and Sustainability Appraisal, as well as representations received before approving the Newick Neighbourhood Plan. It was concluded that public consultation formed an essential part of the production of the Newick Neighbourhood Plan. Consultation was ongoing and transparent, and there were plentiful opportunities for comment, with comments duly considered and reported. The Examiner was satisfied that the consultation process was significant and robust.

6.11. Paragraph 183 of the NPPF says that "[neighbourhood] planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need". It adds that "[parishes] and neighbourhood forums can use neighbourhood planning to ... set planning policies through neighbourhood plans to determine decisions on planning applications ...". Paragraphs 184 and 185 state: "184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community.

6.12. As the National Planning Policy Framework states, the aim of the planning system is to deliver sustainable development. This has been carried through in the Neighbourhood Planning Regulations, which require that neighbourhood development plans contribute to the achievement of sustainable development. Consequently, modification of planning agreement as proposed is considered to be acceptable.

6.13. Having considered the fact that the principle of housing development on the application site has been accepted under the Newick Neighbourhood Plan site allocation and substitute open spaces were presented, it is officer's view that the current s37 of the Town and Country Planning Act 1962 legal agreement no longer serves a useful purpose. Therefore it is recommended that this application be approved and the legal agreement is modified.

## **7. RECOMMENDATION**

That the proposed variation of the section 32 Agreement dated 26 April 1986 be agreed, to provide residential development on the land allocated within the Newick Neighbourhood Plan.

### **This decision is based on the following submitted plans/documents:**

<u>PLAN TYPE</u>	<u>DATE RECEIVED</u>	<u>REFERENCE</u>
Location Plan	24 January 2018	R18.NK.06A