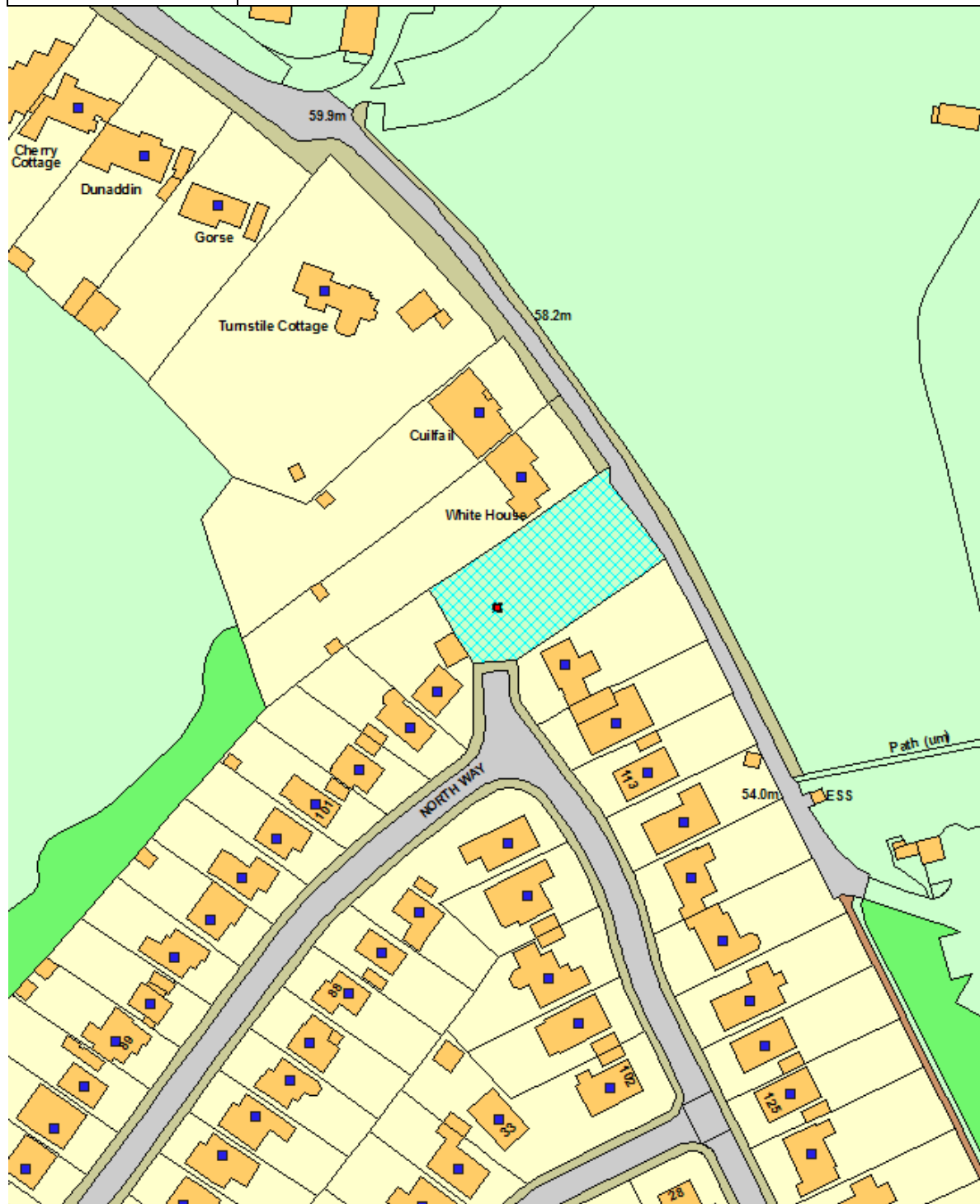


APPLICATION NUMBER:	LW/18/0506		
APPLICANTS NAME(S):	Seaford Town Council	PARISH / WARD:	Seaford / Seaford North
PROPOSAL:	Modification of Planning Obligation for Amendment to planning obligation S/106/1291 to cease the use of the land as 'children's play area'		
SITE ADDRESS:	Land Between 107 And 109 North Way Seaford East Sussex		
GRID REF:			



1. SITE DESCRIPTION / PROPOSAL

SITE DESCRIPTION

The application site is a plot of amenity land situated in the north-west corner of North Way, between nos. 105 and 107 North Way, and adjacent to White House, a property in Firle Road. There is a golf course on the eastern side of Firle Road, and this marks the edge of the South Downs National Park. The application site is on the edge of, but contained within, the defined Planning Boundary for the town of Seaford. The housing in North Way is relatively recent, having been built through the mid to late 1980s. Prior to this the location was countryside.

The space has a public footpath running through it (Footpath 77), the route of which is alongside the western and northern boundaries of the site. This is confirmed both by the ESCC Public Rights of Ways map, and the two directional public footpath sites within the site. However, pedestrian desire lines have worn a path diagonally across the site because this is the shorter and more direct route from North Way to Firle Road.

The site is predominantly grass, with a planted boundary to Firle Road. The houses on the southern side of Firle Road are within a designated Area of Established Character (H12).

The land is some 49m across and 23.5m in width, having a rectangular shape. The site area is some 1057 square metres. The submitted plan is in accordance with the plan attached to the S.52 Agreement.

PROPOSAL

The application site is subject to a S.52 obligation requiring the land to be used as a Children's Play Area. This requirement dates back to the time that North Way was developed for housing and S.52 was in the Town and Country Planning Act 1971, which is now superseded by S.106 of the Town and Country Planning Act 1990.

The application is a formal request to the district council to remove this restriction on the land use in order for an application for development of the site with 3 houses, submitted in tandem, can be determined.

PLANNING HISTORY

LW/18/0589 - Outline application for the erection of 3 detached dwellings. Under Consideration

LW/17/0968 - Outline application for the erection of 3 detached dwellings. Application Returned

LW/85/1291 - Approval of Reserved Matters (LW/83/0590) for the erection of nine detached three-bedroom houses, five detached three-bedroom bungalows and seven detached two-bedroom bungalows together with garages on plots 141-154 and 201-207. Approved 20 November 1985. *This is the decision to which the S.52 Agreement is attached.*

LW/85/0514 - Approval of Reserved Matters (LW/83/0590) for the erection of two three-bedroom detached houses and one two-bedroom detached bungalow together with three garages on plots 140, 208 and 200 Blatchington Green (Now 095 and 088 North Way and 033 Lucinda Way) and construction of estates roads. Approved 10 May 1985.

LW/83/0590 - Outline application for residential development. Restrictive Planning Condition. No 13. Approved 9 August 1983. *Condition 18 requires pedestrian links between the development and Firle Road.*

S/57/0027 - Outline application for residential development. Refused 25 March 1957.

S/53/0090 - Outline application for residential development. Part Approved/Part Refused. See Plan - Sections B, C, D, E & F Approved, Sections A & G Refused. Split Decision 30 November 1953.

2. RELEVANT POLICIES

LDLP: – CT01 – Planning Boundary and Countryside Policy

LDLP: – ST03 – Design, Form and Setting of Development

LDLP: – CP8 – Green Infrastructure

LDLP: – CP11 – Built and Historic Environment & Design

LDLP: – CP7 – Infrastructure

3. PLANNING HISTORY

LW/17/0968 - Outline application for the erection of 3 detached dwellings -

LW/18/0506 - Amendment to planning obligation S/106/1291 to cease the use of the land as 'children's play area' -

LW/18/0589 - Outline application for the erection of 3 detached dwellings -

4. REPRESENTATIONS FROM STANDARD CONSULTEES

5. REPRESENTATIONS FROM LOCAL RESIDENTS

A large number of representations have been received for local people, including a petition containing over 300 signatories with the following preamble:

We demand Seaford Town Council withdraws its application to develop Blatchington Green (land between 107 and 109 North Way, Seaford) and to commit to preserving the site in its present use as a green open space.

For over thirty years residents have enjoyed Blatchington Green as a green open space. The near final draft of the local Neighbourhood Plan identified this area of Seaford has less than the recommended number of green open spaces. The Council should remove its notice prohibiting ball games and encourage the community to take a lead in site management. The site provided an important habitat for wildlife and protected species, including a safe corridor between the South Downs National Park and Seaford Gardens, school playing fields and other spaces towards Blatchington Pond.

Individual objections have been received from 116, 128 (Orchard House), 130 (White House) Firle Road; 85 Lexden Road; 17, 18, 22 The Ridings; 24, 59, 61, 78, 92, 97, 98, 101, 102, 103, 105, 107, 109, 121, 122, 134 North Way; 17 Lucinda Way; and 81 Dawley Road (Hayes), commenting as follows:-

Over development
Out of keeping
Out of character
Contextual significance
Conservation significance

Within the conservation area
 Building in countryside
 Outside Planning Boundary
 Three properties will appear incongruous
 Cramped appearance
 Bungalow built on similar site nearby is out of keeping and has not been sold
 Disproportionately small gardens for large properties
 Inadequate amenity for future occupants
 Distress for local residents
 Adverse effect on quality of life
 Loss of light
 Overlooking, loss of privacy
 Overshadowing
 Overbearing building/structure
 Noise and disturbance
 Smell/fumes
 Breaches Firle Road building line
 No garages
 Shared driveway
 Inadequate access
 Increased volume of traffic
 Traffic generation
 Increased traffic due to expansion of Cradle Hill School
 Heavy lorries using estate roads for site access
 Increased parking
 Public footpath will need to be diverted
 Access to Firle Road from North Way should be retained and accessible to the elderly and those using electric buggies
 Contrary to Seaford Neighbourhood Plan
 Loss of open space
 Essential for the health, exercise and well-being of children
 Effect on wildlife
 Loss of trees
 Drainage
 Historical significance
 Perpetuity is defined as something lasting forever
 Contradicts policies identifying need for more open space in Local Plan and Neighbourhood Plan
 Used by walkers to access surrounding fields
 Used by dog-walkers to access countryside
 Should be decided by local referendum
 Will block easement/right of way for access to back garden of neighbouring property
 Covenant on the land restricting development to one dwellinghouse
 Insufficient information
 Lack of infrastructure
 Not sustainable
 Applicant's interpretation of the Law of Property Act is wrong
 Residents regularly played rounders on the land
 Seaford Town Council has not properly maintained the land
 Invalid consultation and assessment by Seaford Town Council

6. PLANNING CONSIDERATIONS

Legal Implications

A section 52 planning obligation entered into, on or before, 25 October 1991 may be modified or discharged by:

i) agreement (at any time) between the local planning authority and the person or persons against whom it is enforceable.

ii) an application to the Upper Tribunal (Lands Chamber) pursuant to Section 84 of the Law of Property Act 1925 ("S.84 LPA'25").

S.84 of the Law of Property Act 1925 deals with all types of restrictive covenants affecting land and sets out the potential grounds upon which the Upper Tribunal may decide to modify or discharge an agreement. These include:-

1. The covenant is obsolete by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which Upper Tribunal may deem material,
2. There is agreement to the discharge or modification between all those with the benefit of the restriction,
3. The restriction restricts a reasonable use of the land and confers no practical benefit of substantial value or advantage on the persons entitled to the benefit of it (or is contrary to the public interest) and the loss of the covenant can be compensated in money, or
4. No injury will be caused to those entitled to the benefit of the covenant by reason of its discharge or modification.

Should Members of the Planning Applications Committee consider it appropriate to discharge the section 52 planning obligation, a deed of discharge will be entered into pursuant to Section 111 of the Local Government Act 1972 and Section 1 of the Local Government Act 2000.

Planning Assessment

This application has attracted many objections from local residents and these are acknowledged and have been taken into consideration. Clearly the open space is of great value to local people.

Firstly, it must be clarified that this application is solely for the removal of the S.52 planning obligation from the land. There is a separate planning application for re-development of the site with 3 houses (ref. LW/18/0589) and as such residents' comments on the design, appearance, parking and traffic impact will carry greater weight in the determination of that separate application.

The S.52 Agreement attached to the approval of the reserved matters application LW/85/1291, states at clause 5. of the Schedule:

"Between the dates of the completion of the laying out of the green land as a children's play area and in accordance with Clauses 1-4 hereof until the date that the ownership of the green land is conveyed to the Council in accordance with Clause 6 hereof the Owner shall maintain the said play area to the satisfaction of the Council's Head of Leisure and Recreation and shall cause the same to be available without charge to (inter alia) any residents of houses constructed on the red land for use as a play area."

This area has been laid to grass, and has not been host to play equipment (ref. Memo dated 17th March 1989). The land was handed over to Lewes District Council on 22nd

March 1989 and subsequently passed to Seaford Town Council on 17th June 2002 under the council's devolution programme.

It is understood that the land has been mown on occasion, and it provides an important thoroughfare for pedestrians and cyclists between North Way and Firle Road.

In terms of its function, the properties in North Way have private back gardens which residents and their visitors use as private amenity space. The application site is overgrown in places and its primary function appears to be as a link between North Way and Firle Road, providing access to the golf course and to the wider South Downs National Park and countryside. This function is safeguarded by the public footpath designation through the site, the official route of which is not diagonally across the land.

The land has no play equipment and has an uneven and overgrown surface. There is a sign within the space prohibiting the playing of ball games although residents have provided anecdotal evidence of the space being used for informal children's play such as rounders games. At the time of the site visits, of which there have been more than one, there has been no evidence of the land being used, or having been used, as a play area.

Public Footpath

The current application is only for the removal of the S.52 Obligation and is not proposing to develop the land (this aspect is subject to a separate application).

The proposed removal of the S.52 Obligation has no bearing on the public footpath designation which crosses the site. It applies solely to the requirement for the land to be kept as open amenity space. The public right of way will be retained.

Planning Policy Position

In terms of planning policy and the objectives of the adopted Lewes District Local Plan Part One: Joint Core Strategy, the loss of the green space may be considered to conflict with those aims. Seaford has a significant shortage of children's play space when compared to the Council's approved standards and planning applications to develop existing children's play areas are likely to be resisted unless alternative suitable provision is made elsewhere, in accordance with Core Policies 7 (criterion 1) and 8 (criterion 4) of the Lewes District Local Plan Part 1: Joint Core Strategy, adopted in May 2016.

Core Policy 7 (2) states that proposals involving the loss of sites used for the provision of community facilities or services should be resisted unless an alternative facility of equivalent or better quality to meet community needs is available or will be provided in an accessible location within the same locality. Core Policy 8 (4) states that development that would undermine the functional integrity of the green infrastructure network or would result in the loss of existing green spaces, unless either mitigation measures are incorporated within the development, or alternative and suitable provision is made elsewhere in the locality, should be resisted.

The removal of the S.52 Obligation will not help to meet these policy objectives.

7. RECOMMENDATION

The land was originally intended to be a children's play space, and not necessarily required as a green space for the purposes of adding value to the character, layout and appearance of the housing development in North Way.

The land is part of the green infrastructure within Seaford, a town which has a shortage of such spaces measured against the adopted standards contained in the Joint Core Strategy, and in terms of planning policy the proposed removal of the S.52 Obligation should be resisted.

Turning to the considerations under the Law of Property Act, the S.52 Obligation may be considered obsolete as the space does not appear to continue to provide a useable area for outdoor play. However, the Obligation is not considered to be obsolete in so far as the land confers value as part of the green infrastructure and does benefit local residents, evidenced by the comments received from third parties that it remains an informal play space.

Whilst there is an established need for new housing, this particular site continues to play an important role as green space and accordingly refusal of this application to remove the S.52 Obligation is recommended.

Reason(s) for Refusal:

1. The land is part of the green infrastructure and confers value to local residents within the locality and the town of Seaford, which is known to have a shortage of such spaces measured against the adopted standards contained in the Lewes District Local Plan Part One: Joint Core Strategy, and as such the removal of the S.52 Obligation should be resisted. In view of the this the proposals are contrary to the aims and objectives of Core Policies 7 and 8 of the Lewes District Local Plan Part One: Joint Core Strategy.

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

<u>PLAN TYPE</u>	<u>DATE RECEIVED</u>	<u>REFERENCE</u>
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