

4.3 - 17/02067/FUL

Date expired 30 August 2017

Proposal: Demolition of existing buildings and erection of 9 dwellings with associated parking.

Location: Tri Officers Mess, 1 - 4 Armstrong Close, Halstead, Kent TN14 7BS

Ward(s): Halstead, Knockholt & Badgers Mount

#### ITEM FOR DECISION

This item is returned to Development Control Committee to correct part A (iii) of the meeting minutes dated 15 March 2018 for item 4.2 (planning application 17/02067/FUL) to refer to provision of commuted sum for off-site affordable housing.

**RECOMMENDATION:** To correct part A (iii) of the meeting minutes dated 15 March 2018 for item 4.2 (planning application 17/02067/FUL) as below:

(iii) *The S106 legal agreement shall include the following requirements:*

- *Provision of commuted sum for off-site affordable housing.*

#### Appraisal

- 1 This report relates to planning application 17/02067/FUL that was presented to the Development Control Committee on 15 March 2018 (item 4.2). Planning permission was granted on 29 March 2018. The report seeks a correction to an error in the recorded minutes of the Development Control Committee meeting. The error, implications and recommendation are set out below.

#### The Error

- 2 The Officer report pursuant to planning application 17/02067/FUL recommended permission be granted subject to 15 conditions and an informative noting that the development is CIL liable and the subject of a Legal Agreement under Section 106. Late observations were also circulated to Members of the committee. The late observations provided clarification and further information in respect of a number of issues. They also stated:

*Amendment to recommendation:*

**RECOMMENDATION A:** *That planning permission be GRANTED subject to:*

*a) The conditions set out in the committee report (and in the late observations), subject to officers being authorised to make any appropriate amendments arising following negotiations and/ or in the light of legal advice.*

*b) A satisfactory legal agreement made under section 106 of the Town and Country Planning Act 1990 (as amended) and any other appropriate legislation being completed no later than 12 April 2018 (PROVIDED THAT if officers are satisfied that the applicant has agreed in writing to the extension of the statutory period for determination, officers are authorised to agree to the extension of the time for completion of the legal agreement and the issue of the decision notice).*

*c) The S106 legal agreement shall include the following requirements:*

*i Provision of on site affordable housing.*

- 3 Recommendation A (c)(i) refers to the provision of on-site affordable housing. This was an unfortunate error that was repeated in part A (iii) of the recorded minutes of the meeting. This irregularity was first brought to our attention on 22 April 2018.
- 4 The error is contrary to paragraphs 56-58 and 78 of the Officer report and the presentation from the Officer at the committee, which all referred to off-site affordable housing. This is consistent with the earlier planning permission (reference 14/01363/FUL) where the principle of a commuted sum for the provision of off-site affordable housing was accepted.
- 5 It is our view that in resolving to grant planning permission on 15 March 2018, Members understood and accepted that the affordable housing contribution was to be made off-site. This is corroborated by evidence in the form of the witness statement from Cllr Julia Thornton (Chair of the DC Committee for this item) at Appendix 1. A further witness statement from Matthew Durling (Principal Planning Officer) will follow.

### Implications

- 6 Expert legal advice has confirmed that whilst regrettable, the administrative error contained in the late observations does not amount to procedural irregularity or impropriety in the assessment of the planning application. It follows that the decision to grant planning permission on 29 March 2018 was lawfully made and is not in any way legally flawed.

### Recommendation

- 7 Legal advice confirms that Members can retrospectively correct the error recorded in part A (iii) of the resolution dated 15 March 2018. It is therefore recommended that part A (iii) of the minutes for item 4.2 be corrected to reflect the intentions of the Officer report and presentation as below:

*(iii) The S106 legal agreement shall include the following requirements:*

- *Provision of commuted sum for off-site affordable housing.*

Contact Officer(s):

Matthew Durling Extension: 7448

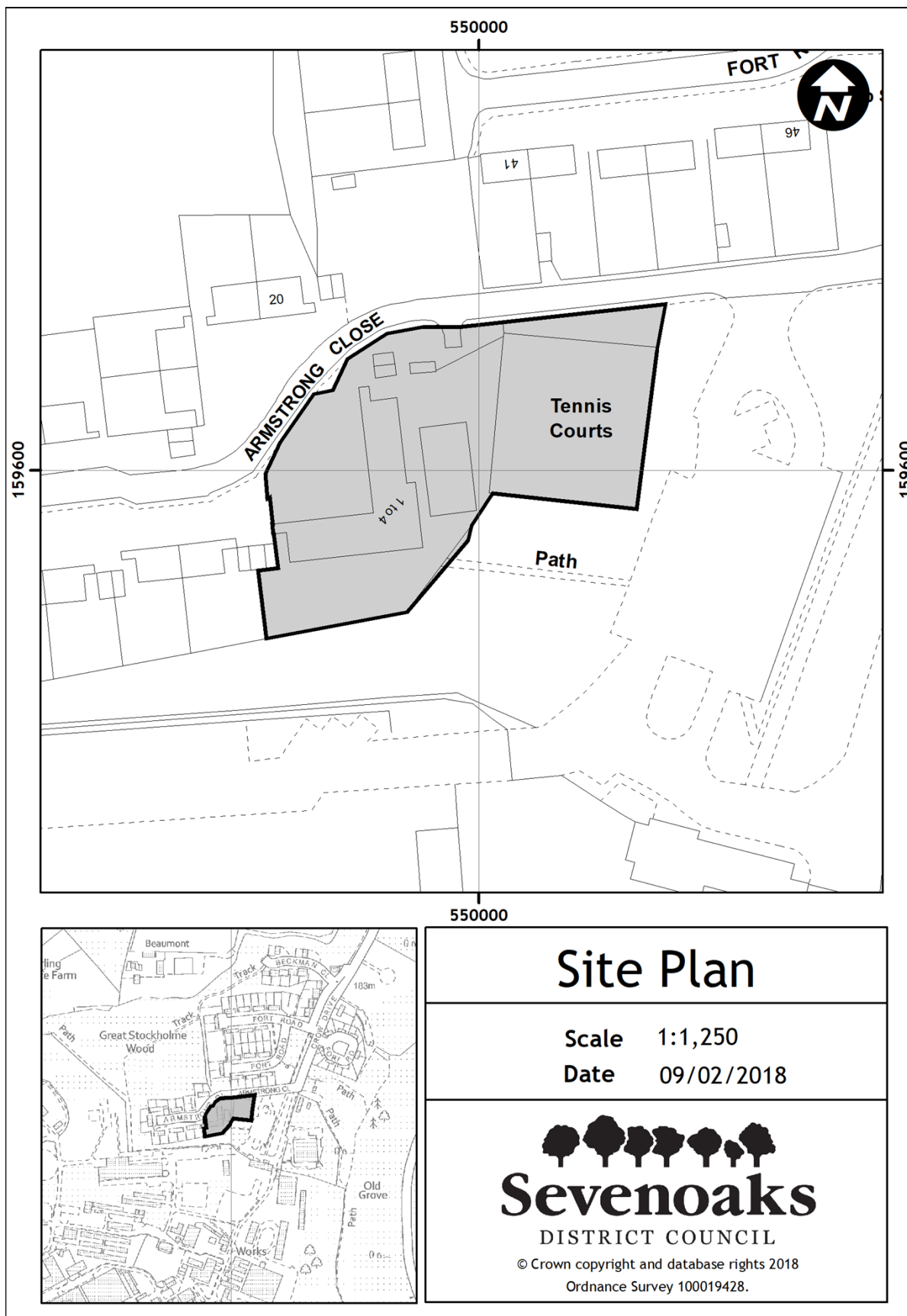
Richard Morris  
Chief Planning Officer

Link to application details:

<https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OSBGIFBKGCU00>

Link to associated documents:

<https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=OSBGIFBKGCU00>



IN THE MATTER OF PART 54 OF THE CIVIL PROCEDURE RULES

IN THE MATTER OF A PRE-ACTION PROTOCOL LETTER BEFORE CLAIM

FORT HALSTEAD RESIDENTS' ASSOCIATION (INFORMAL)

Potential Claimant

-and-

SEVENOAKS DISTRICT COUNCIL

Potential Respondent

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WITNESS STATEMENT OF JULIA LUCY THORNTON

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I, Julia Lucy THORNTON, will say as follows:

1. I am an elected member of Sevenoaks District Council ("the Council") as a representative of the Conservative Party. I have been elected in this role for seven years. I have been a member of the Council's Development Control Committee ("the Committee") for seven years. I have been Vice Chairman of the Committee since May 2013.
2. I make this statement in support of the recommendation to Committee that the minutes of 15 March 2018 be amended.
3. The facts and information contained in this statement are made from my own knowledge and experience unless otherwise expressly stated.
4. The purpose of the Committee is to make planning decisions on applications submitted to (and made valid by) the Council which satisfy the criteria contained in the Council's Constitution for the referral of certain planning applications to be determined by Committee rather than under delegated authority given to the Head of Planning.
5. On 15<sup>th</sup> March 2018, the proposal for a development of the Former Tri-Officers' Mess at 1-4 Armstrong Close, Fort Halstead ("the Proposal") which had been given the planning reference 17/02067/FUL by the Council, was presented to

the Committee in order that a decision be made whether to grant permission for the Proposal or to refuse it.

6. The application had been referred to the Committee by Councillor Gary Williamson in order that the Committee *“consider the bulk of the development on the openness of the Metropolitan Green Belt in accordance with Policy L08 of the Core Strategy and Policy EN1 of the Allocations and Development Management Plan (2015)”*.
7. On that occasion, I was acting as Chairman of the Committee in the absence of Councillor Gary Williamson, who is the Committee’s regular Chairman. I was aware in advance of the meeting that I may be requested to act as the Chairman for that item as a result of Cllr Williamson’s interest in the item (culminating in the referral of the Proposal by him to the Committee) and the requirement for him to remove himself from involvement in the decision-making process on behalf of the Council.
8. I received the agenda for the Committee on 7 March 2018 and read through the officer’s report for the Proposal.
9. I received the Late Observations Sheet, electronically, in the afternoon of 15 March 2018, and in hard form immediately before the meeting, and read through the comments and amendments to the report made therein.
10. On 15 March 2018, I was present throughout the officer’s presentation, questions, discussion and debate on the Proposal.
11. I also attended a Briefing session on Monday 12 March at which the plans for the Proposal were considered.
12. I have had sight of the Pre-Action Protocol letter dated 22 April 2018 received from the Fort Halstead Residents’ Association (Informal) and note its contents in relation to the s106/affordable housing provision. I make no comment upon the submissions contained therein with regard to the consideration of certain ‘planning’ material that the Residents’ Association say should or shouldn’t have been considered by members of the Committee. I have been asked, in particular, to comment upon the Committee’s consideration of the provision of affordable housing for this Proposal and the associated section 106 agreement that has been submitted by the applicant.

13. With regard to the receipt of an affordable housing contribution ("the Contribution"), I confirm that paragraphs 56-58 of the officer's report are an accurate representation of my understanding of the principle that has been accepted by the Council on the last occasion that proposals at this site were considered, and that on this occasion members of the Committee fully understood that the affordable housing for this Proposal would be provided off-site by way of the Contribution.
14. I do not consider that the members were misled about there being any intention to provide on-site affordable housing, notwithstanding what is written at Recommendation A(c)(i) in the Late Observations Sheet. I believe that this was an error on the part of the officer which is contrary to the contents of the report which fully appraised the Proposal and the Council's intention to require financial Contribution rather than on-site provision of affordable housing. The approved plans submitted with the Proposal (in particular, drawing number P201/G dated 17.05.2017 which is available on the Council's website against the Proposal and which is referred to in condition 2 of the Permission) support the principle that there is no on-site affordable housing being provided. These plans were displayed in the Council's chamber in which the Committee meeting was held, on the night of 15 March 2018, for the benefit of Committee members and those speaking on the items to be determined.
15. I have checked the decision letter that was issued by the Council on 29 March 2018 and can confirm that it properly represents the resolution of the Committee on 15 March 2018.
16. I have checked the section 106 unilateral undertaking available on the Council's website against the planning reference 17/02067/FUL and dated 29 March 2018 and can confirm that it properly reflects the intention of the resolution of the Committee on 15 March 2018.
17. From my recollection of the officer's presentation to Committee on 15 March 2018, there was no mention at all of affordable housing being provided on site.
18. I fully support a further resolution in order to amend the wording of the resolution minuted for the meeting on 15 March 2018 so as to accurately record what the Committee intended to be resolved upon their reading of the officer's

report and the knowledge and information which they were in possession of with regard to the Proposal in that it was the intention of the Proposal and the Committee that there be no on-site provision of affordable housing but rather that the affordable housing be provided by a Contribution which supported off-site provision.

**Statement of Truth**

I confirm that the contents of this witness statement are true.

Julia Lucy Thornton