



Appeal Decision

Inquiry Held on 23 March – 4 April 2023

Site visit made on 4 April 2023

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2023

Appeal Ref: APP/A2280/W/22/3307648

Land south of Bush Road, near Cuxton, Medway, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Vineyard Farms Ltd against the decision of Medway Council.
 - The application Ref: MC/21/2328, dated 30 June 2021, was refused by notice dated 30 March 2022.
 - The development proposed is construction of a new winery building including café/restaurant and visitor centre with energy centre, car park, access road and landscaping.
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Decision

1. The appeal is dismissed

Procedural and Preliminary Matters

2. In addition to the evidence presented by the two main parties, a joint case was presented by Cuxton Parish Council and 'Cuxton against the Winery', the Rule 6 party ('the R6 party') whose evidence covered Heritage, Green Belt and Traffic.
3. The appeal proposal was accompanied by a S106 Agreement (S106), the signed and sealed version being dated 25 April 2023, which I shall refer to later in this decision.
4. At the start of the Inquiry the Council submitted an additional rebuttal addressing economic matters. I did not accept this as it was received beyond the date that I had set for the receipt of rebuttals and could have prejudiced the appellants case contrary to the Wheatcroft¹ principles.
5. I accepted a Legal Opinion from an interested party on Green Belt issues at the start of the Inquiry. This had already been seen by the main parties in advance of the Inquiry. Furthermore, I accepted additional evidence from the R6 party during the Inquiry in respect of Traffic and Highway Safety, Heritage and Green Belt as I considered that it did not raise materially different issues from that included in their proofs of evidence.
6. I made 2 unaccompanied site visits on the afternoon of 22 March and evening of 29 March and an accompanied visit during the morning of 4 April 2023.

¹ Bernard Wheatcroft and JPL 1987

7. I agree with the main parties that the appeal scheme is major development within the Kent Downs Area of Outstanding Natural Beauty (AONB).

Main Issues

8. The appeal raises the following as main issues:
1. the effect of the proposal on the Green Belt, including any effects on openness and the purposes of including land within the Green Belt,
 2. the effect of the appeal scheme on the landscape character and appearance of the area including the Kent Downs Area of Outstanding Natural Beauty (AONB),
 3. the effect of the proposal on the capacity of the local highway network and highway safety,
 4. the effects of the proposal on heritage assets including the settings of listed buildings, the Upper Bush Conservation Area (CA) and archaeological remains, and
 5. whether or not the harm to the Kent Downs AONB arising from the proposal is clearly outweighed by exceptional circumstances.

Reasons for the Decision

The Appeal Scheme

9. The appeal site has 2 distinct parts, reflected in the landscape and visual impact assessment (LVIA) for the application².
10. Site A includes a new access from Bush Road which would extend through an existing area of vineyard serving a new 107 space car park with 2 coach spaces from where a service access would continue through woodland to the winery building. The new access would have a total length of around 800 metres. Two pedestrian access routes would extend from the car park through the woodland to the winery building.
11. Site B comprises the winery building which would be used for grape processing storage, bottling, restaurant, café and retail. The winery, partially underground, would have a floor to ceiling height of around 14 metres with a floor area extending to around 165 x 95 metres. It would include service bays designed to accommodate vehicles bringing in the harvest and vehicles despatching the wine bottled on site.
12. Above ground the proposed building's design comprises a convex and elliptical form of four metres in height with a breadth of around 140 metres. The front of the building would include a cantilevered floor to provide for an open plan ground floor and partially covered terrace.
13. An ornamental lake lying just below the terrace, forms part of the scheme's water management strategy. A pedestrian route would extend across the roof of the building. It is intended that wine tasting sessions for around 30 people would be held twice daily and it is anticipated that there would be around 300 visitors per day.

² Terra Firma LVIA 2021

Issue 1- Green Belt

14. The appeal site lies in the Green Belt. The Government attaches great importance to Green Belts and identifies that their fundamental aim is to prevent urban sprawl by keeping land permanently open.
15. The National Planning Policy Framework (the Framework) advises that the construction of new buildings in the Green Belt is inappropriate development. However, there are exceptions and Paragraph 149(a) includes buildings for agriculture.
16. Around 92% of the building's total floor area comprising 15,912sm, would be used as the winery involving the crushing, processing, storage and bottling of wine. These processes are essential to viticulture, an agricultural use. The building would also contain other uses including visitor centre, café and restaurant with 80 covers.
17. Given the amount of floorspace devoted to agricultural use, I regard the overall planning use of the appeal scheme as an agricultural use. The Millington case³ accepts that a winery located within a vineyard falls within the definition of an agricultural use for Green Belt purposes. The proposed use would benefit from the exception.
18. Whilst the R6 party drew a distinction between the scale of the operations proposed as part of this appeal with those involved in the Millington case, I am satisfied that the issue of scale is not material to the application of the agricultural exception.
19. I acknowledge the R6 party's comments with regard to the importance of the area of the Green Belt between Dartford and Rochester within which the appeal site lies. This was considered in a recent Green Belt Assessment prepared by the neighbouring Borough as being an area considered particularly vulnerable to development. However, as the appeal scheme is defined as not inappropriate development this consideration does not apply.
20. For these reasons, I conclude that the appeal scheme is not inappropriate development in the Green Belt and falls within the exception included in Paragraph 149(a) of the Framework.
21. As the scheme is an exception, a consideration in respect of its impact on openness is not required; this matter was tested in a recent Appeal Court case⁴.
22. Despite my findings on this main issue the appeal scheme's landscape and visual effects and heritage impacts require to be considered further in this decision.

Issue 2-Landscape Character and Appearance

23. The Framework requires that great weight is given to conserving and enhancing the landscape and scenic beauty of the AONB which is accorded the highest status of protection. Policy BNE32 of the Medway Local Plan requires that development should conserve the natural beauty, wildlife and cultural heritage of the area. Accordingly, major development should be considered

³ David Bryan Millington v. The SoS ET&R, Shrewsbury and Atcham Borough Council 1999 WL 477821

⁴ R (Lee Valley Regional Park Authority) v. Epping Forest DC [2016] EWCA Civ404, Env LR30 at 18

against criteria which includes the national need, impact on the local economy, cost and availability of alternative sites, any detrimental impact on landscape and the environmental standard of the proposed construction. This is broadly in line with the Paragraphs 176-177 of the Framework.

24. This main issue is determined with reference to the appeal scheme's landscape and visual effects including tranquillity and dark skies.

a) Landscape effects

25. The appeal site lies in NCA 119 and within the West Kent Downs Landscape Character Area (LCA) and the sub area of Luddesdown. The site and its immediate context include features common to the AONB which are recognised in the LCAs⁵ which cover this area. These features include an intimate scale of landscape characterised by dry valleys, dip slopes, chalk escarpments and extensive tree belts some of which comprise Ancient Woodland and wooded shaws.
26. Furthermore, LCA 41, Bush Valley and Dean Farm, highlights the area within which the site lies as having a strong sense of place where landform is dominant with a distinctiveness drawn from its ancient and historic elements which demonstrate continuity. My site visits confirm that these features are present across the appeal site.
27. The appellant⁶ notes that viticulture results in a regularised and regimented pattern which erodes the level of naturalness to the landscape. However viticulture represents an agricultural use which does not undermine landscape features such as topography which is itself a defining feature of the AONB.
28. The appellant's original intention was to share the main access to the site with that existing serving Deans Farm⁷ in the adjacent valley. However, the appeal scheme includes a new access with a width of around 3.5-4.0 metres extending around 400 metres from Bush Road to a new car park. Its route from the western end of Cuxton would extend across a broad gently sloping valley side which rises to the Plantation Woodland. This land is currently open and in use for viticulture.
29. The road is designed to accommodate around 270 vehicle movements each day which would include private cars, HGVs and coaches. The car park would primarily be used for visitors⁸. Whilst the route of the proposed road is designed to take advantage of a fold in the landscape and would be partially screened by additional planting these measures would not entirely disguise its intrusive physical impact as it cuts through the valley side.
30. Although its route is designed as a winding country lane, for part of its length it would run close to the Dean Farm access. The net effect of the addition of the new road running close to an existing route, both finished as metalled roads would be to urbanise this area of the AONB. The scheme includes additional pedestrian footpaths allowing direct access to the car park and winery from Bush Road. The access and road would result in moderate adverse effects.

⁵ County landscape Assessment, Medway Landscape Assessment and the AONB Landscape Assessment

⁶ Ms Brockhurst PoE pa 28

⁷ Mr Robinson PoE

⁸ Mr Bevis R/Table discussion

31. The car park would be located in a dip in the landscape and additional landscaping and woodland planting is intended to provide some screening. It would introduce significant areas of hardstanding and include lighting columns of 3-4metres height. The car park would require some ground levelling resulting in a retaining wall along part of its edge. These features are at variance with the gently folding landscape in this part of the AONB and reflect the degree of urbanisation which the scheme would introduce.
32. The extension of the road through the edge of the Plantation Woodland would be incursive. Whilst the majority of trees scheduled for removal would be of moderate quality with a limited lifespan the clearing required would be around 11m width overall⁹. Whilst its fringes would be replanted the road would be around 4.8m in width and would be a highly urbanised element within this secluded area of the Bush Valley. The impacts would be moderate adverse only mitigated partially over time as the replacement planting takes effect.
33. To accommodate the winery, the field within which it would sit would be re-profiled involving cut and fill resulting in a more even slope than at present, allowing around 85% of the building to lie below the new ground level. This involves raising the landform immediately to the rear of the building by around 5.8 metres with the area lying just south of the winery being re modelled and planted as a vineyard. This area would be dedicated for use by paying visitors on guided tours exploring the relationship of the terroir, the growing process and finally the product, the wine itself.
34. The extent of ground modelling in this area would remove the subtle undulations present across this site resulting in a landform of more uniform slope. This would appear contrived in the context of the natural sweep of the Bush Valley to the south.
35. The introduction of the proposed winery into a landscape recognised for its seclusion and intimacy would have a significant adverse impact on the site and its wider landscape. I acknowledge that the roof and the building's southern elevation have been designed to reflect the surrounding topography and include a green roof comprising chalk grassland which would extend from its immediate landscape. These features could reduce its impact with the building read as part of the landscape.
36. However, to maximise views over the Bush Valley the proposed winery includes an extensive glazed southern elevation partially recessed under a concrete roof. A broad terrace would lie by an ornamental lake, below which would be wine processing areas within the basement of the building. Furthermore, the service yard and energy centre located towards its rear would be of unsympathetic functional design. These are features which would conflict with the existing landscape character.
37. Overall, the proposed scheme would result in significant landscape harm to the qualities of the Medway LCA 41, (Bush Valley and Dean Farm) and the sub area of Luddesdown, West Kent Downs LCA within the AONB.

b) Visual Effects

38. The main parties agree that the Zone of Theoretical visibility (ZTV) extends to around 1.3 kilometres from the winery building. This reflects the site's relative

⁹ Terra Firma Vol 2 p.11

self-containment which is a product of its local topography and woodland. A series of viewpoints were agreed by the parties located on PROWS¹⁰ throughout the local area.

39. I address the impact on viewpoints and those receptors most affected by the proposal, based on impressions gained on the accompanied site visit. Whilst the most significant effects would be experienced during construction, the following comments are restricted to appearances at Year 10 (Y10)¹¹ when planting would have matured.
40. The proposed vehicular access would be directly opposite several residential properties on Bush Road and the proposed road would be visible from the rear of residential properties in Riggall Court. These are particularly sensitive receptors. Whilst there is no 'right to a view', occupiers currently experience uninterrupted vistas across vineyards towards the Plantation Woodland. The proposed access and road would severely diminish their outlook which would not be adequately mitigated for. Notwithstanding my earlier comment on a right to a view occupiers of these properties would still experience moderate adverse visual impacts even at Y10.
41. From the car park, the road would run parallel to the footpath (FP) RS208A by the existing Dean Farm access before turning into woodland to the east. The FP allows clear views of the traffic using the road. The proposed road would represent an unwarranted interruption into the existing views from this footpath. The kinetic experience along this path would not alter the degree of impact. Although the scheme includes new planting located between the footpath and access the impacts would still be moderate adverse.
42. The FP rises through woods above the access road and car park. Although views would be filtered to some degree by existing trees and additional planting sight of the car park would not be completely obscured. This would result in moderate adverse impacts for the footpath user even by year 10.
43. The route of FP RS210 lying at the rear of the winery building, would be crossed by the service road and the pedestrian route leading from the car park. There would be a significant increase in activity at these points compared to that existing, undermining the sense of seclusion. This would be reinforced by clearings within Plantation Wood, created to accommodate the road from the car park. Moderate adverse impacts would arise which could not be sufficiently mitigated.
44. The building is itself a major development and would have adverse impacts on the visitor's experience when viewed from FP RS210. Although views across the site would be filtered from this footpath by existing hedges the building's scale would be apparent and reinforced by the new land profile between the path and the vineyard following its levelling at the front of the site.
45. The North Downs Way runs by the appeal site and lies close to the proposed location of the winery. This path is also the route of three long distance paths including the St Bernard's Way, Pilgrim's Way and the E- Route Middleton in Teesdale to Dover. It is a highly sensitive receptor being a National Trail with historic resonance.

¹⁰ Public Rights of Way

¹¹ LP3

46. As the visitor emerges from North Wood, this footpath affords clear views across the Bush Valley, whilst also allowing clear views of the winery site. Although the kinetic experience means that the degree of its visual impact would diminish, towards the bottom of the path on the approach to Upper Bush, the outline of the winery would still be visible made apparent from the use of its rooftop promenade.
47. There is no dispute between the parties that the building, as major development would be visible from this path. Its location within the site has been designed to allow clear views over the vineyard¹² and to 'showcase' the vineyards across the whole of the Bush Valley. The appellant places considerable weight to the creation of a new vista from the terrace across the whole of the Bush Valley although in practice it is effectively the same as from the existing footpath at this point.
48. The appellant team considered that the overall appearance at this point would be that of an agricultural building reinforced through a combination of activities associated with the loading and unloading of produce and informed by views of the storage tanks within the building. However, given their location in a deep well within the heart of the building and with a height of just six metres it is doubtful whether these tanks would be seen at all.
49. In practice however, the building's design means that it would be both an agricultural building and a visitor centre. This is evident from the series of montages included in the appellant's evidence¹³ which show a well used terrace and restaurant. The seasonal activities associated with viticulture would be supplemented by all year round activities associated with the building's ancillary uses. At various periods and times during the year it is likely that these would be the uses most visible from this footpath.
50. The building's ancillary functions would attract a considerable number of visitors visible on the terrace and roof promenade. Compared to the views currently experienced towards the site, the winery would be a source of constant activity. This distinguishes the impact of the appeal scheme on the site and its immediate surroundings when compared to the activities associated with viticulture which would be limited in extent and duration. In this sense the use of the building would significantly detract from the site's contribution to the landscape and scenic beauty of the AONB. For these reasons, when viewed from this point the impacts would be major adverse.
51. From the North Downs Way within the hamlet of Upper Bush the visual impacts of the winery would diminish resulting in neutral effects. However, as the path descends towards Bush Road the proposed access and road would become visible, with minor adverse impacts on views across this part of the valley although these would diminish on reaching the road.
52. Further north along FP RS161, Sites A and B would be visible from points beyond the rail tunnel. At the top of the path by the bench, the degree of vantage afforded by the elevation allows clear views towards these parts of the application site. Whilst Site A would be just visible leading to minor adverse visual effects, the winery with the lake would present a discordant element in

¹² Mr Robinson PoE p.53

¹³ Design and Access Statement

the dry valley landscape when viewed from this point resulting in moderate adverse effects.

53. Lying further to the west, the Brockles viewpoint, located on the edge of the Ranscomb Farm Plantlife Reserve is promoted as one of the best views in the AONB. The vantage afforded of both Sites A and Site B is similar to that from by the bench. However due to the importance of this viewpoint within the AONB I accord it considerable importance and recognise its high susceptibility to change. Accordingly, I find that from this point views of Site A would result in minor adverse visual effects but views of Site B would result in major-moderate adverse visual effects.

c) *Tranquillity*

54. The Conservation Board's Management Plan recognises that 'peace and quiet' is a quality of the AONB which is identified in the Board's public perception surveys. The Luddesdown Sub Area is recognised as having a peaceful and remote feel; a feature recognised by the LVIA¹⁴ submitted with the application. The conservation and enhancement of tranquillity is included in Principle SD7 of the Management Plan.
55. In the context of the United Kingdom tranquillity is relative. This is true of the AONB and applies to the appeal site itself which experiences minor levels of noise from distant sources including overhead planes and the M2 motorway bridge across the Medway. Disturbance from these sources is marginally more pronounced on the northern part of the site.
56. The appellant identifies that viticulture has led to the generation of more noise than would have been associated with the arable use of the site through the increased number of tractors thereby diminishing the site's tranquillity¹⁵. Whilst I acknowledge that as the vines become established viticulture can be an intensive form of agriculture the level of activity would not occur as a constant across the whole estate, especially one comprising around 1,100 acres.
57. Relative tranquillity when for example, bird song could be heard, was experienced during the accompanied site visit, a point acknowledged in the Noise Assessment¹⁶.
58. The Intrusion Mapping¹⁷ demonstrates that the site lies in an area at the low end of the spectrum, i.e., that it experiences a moderate level of noise consistent with its location on the edge of the AONB; this is confirmed by the Council. However, this should not be a pretext to support a range of additional activities which would erode tranquillity further and in so doing undermine the qualities of this part of the AONB.
59. The proposed scheme would introduce a range of new activities into the Bush Valley unrelated to agriculture which would generate additional sources of noise disturbance. These would include noise derived from vehicles and coaches using the car park, service vehicles to the winery and the movement of around 300 visitors and staff each day across the whole site. These activities would extend up to 11.00pm with some limited activity as staff leave the

¹⁴ Terra Firm Vol 1 p.41

¹⁵ South Downs National Park Viticulture Growth Impact Assessment Vinescapes, April 2021

¹⁶ CD 2.1.15

¹⁷ PoE Ms Brockhurst p. 38

building for up to an hour later. The Noise Assessment identifies that noise arising from traffic would be largely confined to the daytime. However, this would not be the case. New sources of disturbance would be introduced at times which are currently relatively tranquil and so would cause harm to this recognised characteristic of the AONB. The effects would be moderate adverse.

60. Finally, I distinguish 'tranquillity' from 'wildness' which is referenced in the decision letter. The main parties agreed that 'wildness' is not a special characteristic of the AONB and that the site or the surrounding area are not a wild landscape¹⁸. This matter was not pursued by the Council during the Inquiry and from my assessment of the evidence on this point including my unaccompanied site visits I am satisfied that it is not an attribute of the site or its landscape context and so requires no further consideration.

d) Dark Skies

61. The LVIA which accompanied the application acknowledges that darker skies are a high value component of the AONB and that the Bush Valley would be highly susceptible to change from new external and uncontrolled sources of lighting.
62. The LVIA acknowledges that there is a difference between Sites A and B with the former having a reduced susceptibility due to the light spillage arising from street lights along Bush Road, within Cuxton, and to a limited degree from the sky glow from Chatham and Rochester.
63. The proposed lighting strategy¹⁹ categorises the whole site within Environmental Zone 01 which recognises its sensitivity as a 'dark sky' environment. The strategy is predicated on ensuring the safety and security of people moving around the site and differs from the requirements in the 'task areas' involving the loading and servicing of the winery and energy centre. To balance these needs, and to reflect the site's sensitivity, the strategy includes measures such as sensors, controls on luminescence and restrictions on mounting heights limited to six metres.
64. Montages²⁰ and the strategy show that the impacts on the residential properties in Riggall Court and Bush Road would be minor adverse.
65. I acknowledge the concerns of an interested party²¹ on this matter but I agree with the appellants conclusions. No evidence to dispute that of the appellant is before me.
66. In the absence of evidence to the contrary I find that overall the impacts would be minor adverse.

Conclusions on Landscape Character and Appearance

67. Policy BNE32 requires that development within the AONB should conserve its natural beauty. I acknowledge that the appellant considers that the scheme has been landscape led and the design of the winery building has sought to combine its functions for both wine processing, storage and bottling with retail and restaurant uses designed to create a tourist destination.

¹⁸ Landscape Statement of Common Ground

¹⁹ CD2.1.14

²⁰ LP2

²¹ ID 28

68. These ancillary uses have led to a design which seeks to maximise views over the Bush Valley. In doing so the winery building would become a dominant urban feature in a secluded valley. Although mitigation planting is proposed around the access and car park these to my mind would be insufficient to moderate the degree of harm arising. This would lead to significant adverse landscape and visual effects which run counter to the adopted policy.
69. In terms of tranquillity and lighting I find that the concentration of activities associated with the appeal scheme would harm the qualities of the AONB leading to moderate adverse impacts with minor adverse impacts on residential receptors.
70. The appellant acknowledges that there would be some significant and residual harm arising from the appeal scheme²² with moderate adverse effects on topography, geology and dark skies arising from the access and car park and on the tranquillity of the area. Whilst there would be some beneficial impacts on matters such as nature conservation arising from the additional planting this would be outweighed overall by the adverse landscape and visual impacts on features which define this part of the AONB.
71. For these reasons, I conclude that the appeal scheme conflicts with Policy BNE32 of the Medway Local Plan 2003.

Issue 3- Highway Capacity and Safety

72. There was general agreement between the R6 party and the appellant on the baseline conditions regarding the movement of traffic throughout the local area. Bush Road carries a significant number of HGVs serving the surrounding farming community. Within Cuxton, surveys by both the R6 party and the appellant indicate that whilst a consistent number of cars pass through the village, peak traffic flows are recorded at the time of the school run which is distinct from the normal morning and evening peak periods.
73. The peak traffic movements arising from the appeal scheme accord with the scheduled times for the wine tasting events at 9-10.00am and 1-2.00pm each day and during the times between each of these sessions at around 12.00-13.00hrs. These times sit outside those of the normal peak periods in Cuxton. For this reason, despite the existing traffic restraint measures along the Bush Road, the anticipated levels of traffic arising from the appeal scheme could be accommodated.
74. Many of the interested parties²³ are concerned about highway safety. The appellant's evidence identifies that the appeal scheme would generate around 12 HGV and coach movements each day during the peak summer period.
75. I am satisfied that the number of traffic movements arising from the proposed scheme can be accommodated along Bush Road without harm to the free flow of traffic. Accident data provided by the appellant for the previous five years along Bush Road indicates that the accident rate is low with no fatalities. Given the configuration of the road and accident data I am satisfied that the development would not be prejudicial to highway safety on Bush Road.

²² Terra Firma LVIA Vol 2 2021

²³ID14, ID15 and ID16

76. The A228, which Bush Road joins, carries large volumes of traffic being an important link between the M2 and M20 motorways. The R6 party objects to the impact of additional traffic from the appeal scheme on this junction of Bush Road with the A228 and I heard anecdotal evidence from an interested party about this matter. However, only one accident has been recorded at this junction in the last five years. The appellant's traffic surveys indicate that the appeal scheme would have a limited impact on the operation of this junction during peak hours and whilst there would be some slight increase in queuing this would not be significant. The ratio of flow capacity would be within acceptable limits. As such, I am satisfied that there would be sufficient junction capacity.
77. The appellant's suggested alternative or 'fallback' position includes winery buildings with a farm shop near Lower Bush accessed directly from Bush Road. This would generate slightly lower levels of traffic than the proposed scheme given that there would be fewer staff and visitors. However, there would be higher numbers of larger vehicles arising primarily from the additional tractors required to transport grapes along Bush Road during harvest times. Given the location of the 'fallback' site these vehicle movements would be largely concentrated on a short stretch of road located away from the centre of the village.
78. The Framework Travel Plan includes a range of measures designed to encourage travel by modes other than private transport. This provides for a shuttle bus which would pick up visitors from local rail stations who had pre-booked the restaurant and the tours. I am satisfied that the management of the Framework Travel Plan could be secured through the suggested planning condition.
79. The S106 Agreement includes a range of measures for the public footpath network in the local area. This includes signage and wayfinding (£4,000), a proposed traffic study including highway improvements which may be recommended by the study (£80,000), improvements to Tomlins Way, an existing public footpath (£30,000). These measures are designed to address local concern over accessibility and address the impacts of additional traffic arising from the scheme on highway capacity and safety.
80. Other footpath improvements within and around the site would serve to improve highway safety such as the link between the two parts of the North Downs Way on Bush Road whilst others would allow connections to existing footpaths.
81. It is not disputed that²⁴ present levels of Nitrogen Dioxide (NO₂) are within UK Air Strategy objectives. The present levels of traffic emissions along Bush Road would not be hindered by topography or the position and the location of existing buildings. Furthermore, it is anticipated that emissions are likely to reduce over time as the numbers of electric vehicles increases.

Conclusions on Highway Capacity and Safety

82. Based on the evidence before me I am satisfied that the additional traffic generated by the appeal scheme could be accommodated within the capacity of the local road network and would not compromise highway safety. I therefore

²⁴ Technical Note from WSP 21 February 2023

conclude that there would be no conflict between the appeal scheme and Policies T1, T2, T3, T4, T13 and T14 of the Medway Local Plan 2003. Nor do I find conflict with Paragraph 111 of the Framework which is clear that schemes should only be refused on highway grounds if there would be an impact on highway safety or if the residual cumulative impacts on the road network would be severe.

Issue 4-Heritage

83. Policies BNE12 and BNE14 together require that development proposals within the setting of a CA should achieve a high quality of design to preserve the historic or architectural character or appearance. These are supported by the policies included in the Framework which require that great weight is attached to an asset's conservation.
84. The proposed winery building would be located around 100 metres from the Upper Bush CA. Upper Bush is a hamlet of medieval origin comprising several buildings of which High Birch is Grade II* listed and Barrow Hill House is Grade II listed. Both buildings are described as 'Hall Houses' dating from the fifteenth century and comprise timber frames with plain tile roofs with a range of original internal and external features although High Birch has greater structural complexity.
85. The CA is centred on the hamlet but includes three limbs, one of which extends south-east from the hamlet along a belt of trees, described as a 'shaw'²⁵. This lies adjacent to the boundary of the appeal site alongside the route of the North Downs Way which runs through the hamlet.

a) Listed buildings

86. In respect of the impact of the proposed scheme on the setting of listed buildings, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers, to have special regard to the desirability of preserving listed buildings or their setting. The Framework defines 'setting' as the surroundings in which a heritage asset is experienced.
87. Historic England's guidance (The Setting of Heritage Assets, Planning Note 3) advises that the setting itself is not a heritage asset. Its importance lies in what it contributes to the significance of the heritage asset or the ability to appreciate that significance.
88. The listed buildings are well preserved, their significance lying in their importance, both visually and historically, as medieval buildings in the relatively unspoilt surroundings of Upper Bush, which lies on an important medieval trade route, now the North Downs way. The CA encompasses the hamlet and comprises the joint setting of the listed buildings, which contributes positively to their significance.
89. There would be little or no intervisibility between the site and the listed buildings but, from the North Downs Way, glimpses of the site and the listed buildings might be possible, concurrently or sequentially. However, negligible visual harm would arise to the significance of the listed buildings or their setting because of this.

²⁵ ID27 includes the OED definition of a 'shaw'

90. The Council's rebuttal withdrew its objection to the appeal scheme's impact on the setting of High Birch on the basis that it had misunderstood its historical links with the appeal site. The Council did not consider that the appeal scheme would have affected the setting of Barrow Hill House.
91. I am satisfied that these buildings do not have any direct historical relationship with the appeal site and there are no other matters which arise from the appeal scheme which could affect their setting. The proposed winery building would not harm the setting of either High Birch or Barrow Hill House leading to harm to their special significance as designated heritage assets. I therefore find that there is no conflict with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 or with the Heritage policies in the local plan and the Framework

b) The Conservation Area

92. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Policy BNE12 reiterates the requirement and Policy BNE14 seeks to protect the settings of Conservation Areas amongst other aspects.
93. The CA is itself a designated heritage asset with its setting largely determined by its relationship to the surrounding farmland; this includes the site of the proposed winery building. Both parties acknowledge that this relationship does not include the site of the car park and road access given the combination of both their distance and visibility from the CA.
94. The hamlet was a thriving agricultural settlement in the mid nineteenth century. Whilst the number of houses has changed since this time it now comprises just six dwellings and the outbuildings of High Birch Farm which lies on its western side.
95. The parties differ on the significance of the relationship between the CA and the appeal site. The CAA²⁶ identifies as a key characteristic its unspoilt rural surroundings and that's its medieval origins are owed to its location on a trade route, now the route of the North Downs Way, which runs through the hamlet. Many of the features identified in the CAA including its seclusion are still evident on approaches from the North Downs Way and from the rural lane to the north.
96. Tythe maps dating from the mid nineteenth century indicate that the site was farmed as part of both Dean Farm which lies in the adjacent valley, as well as Upper Bush Farm. Given the hamlet's proximity to the appeal site there is a high likelihood that some of its residents would have, at various times farmed the land within which the appeal site lies. A point acknowledged by the appellant²⁷.
97. The inclusion of the shaw in the CA is significant. It lies between two fields which, from the appellant's historical records, marked a boundary between either land ownerships or between land on which tenant farmers had rights.

²⁶ CD 1.1.2

²⁷ Ms Stoten XX

98. Whilst I am not persuaded by the Council's evidence that in part this is a manmade structure, it does have a historical relationship between the hamlet and the appeal site leading to the site having a degree of 'time depth' which contributes to the setting of the CA. In its current state the appeal site allows an appreciation of the CA as a settlement of people who farmed it. This is an intimate relationship determined by topography, its enclosure, relative tranquillity and seclusion and reinforced by the route of the North Downs Way around which the hamlet grew.
99. The introduction of major development into this context would introduce activities unrelated to agricultural use. Its contemporary design and scale would be dominant in views by the shaw. The appeal scheme would undermine this historic relationship resulting in harm to the setting of the CA in conflict with Policy BNE14 of the Medway Local Plan and the policies included in the Framework.
100. The appellant draws parallels between the appeal scheme with the historic use of the now demolished oast house and the Old Bakery in Upper Bush. Given the absence of detailed historical records on how each of these uses operated I do not consider that informed comparison can be made.
101. For these reasons, I find that the appeal scheme would cause less than substantial harm to the significance of the designated heritage asset within a modest range of that scale of harm. The extent of harm requires further consideration against the public benefits arising from the appeal scheme as part of the planning balance required by Paragraph 202 of the Framework.

c) Archaeological remains

102. Site investigations involving the assessment of trial trench evaluations, desk based research and analysis of cartographic records have identified archaeological remains comprising two conjoined circular barrows. These have been degraded by ploughing resulting in the loss of above ground elements which may have existed. These barrows would lie under the proposed winery building.
103. The appellant and the R6 party differ on their interpretation of the results of these surveys. The appellant indicates that the remains are a funerary monument of the late Neolithic or Early Bronze Age and concludes that there is unlikely to be a Neolithic long barrow present as the R6 party suggests.
104. In contrast the R6 party considers that the form of the remains are unusual and rare, possibly indicating a mortuary enclosure or a double or composite barrow. They consider that the results of survey work are inconclusive. The Council in its assessment of the application for planning permission drew on the advice from Historic England that on balance the remains do not meet the level of significance required for designation as an Ancient Monument. The County's Archaeological Unit has advised on conditions in the event that the appeal be allowed.
105. I am satisfied that on the balance of evidence before me the remains should be considered as a non-designated heritage asset with only limited significance. This is a matter which I consider under the planning balance further in this decision.

Conclusions on Heritage

106. Inherent within the Council's adopted policies BNE12 and BNE14 is a requirement that new development should preserve the area's historic or architectural character or appearance.
107. When considering the impact of a proposed development on the significance of a designated heritage asset the Framework requires that great weight is given to its conservation. I find that the development of such a large building in such relatively close proximity to the CA would adversely impact on its setting conflicting with Policy BNE14 and the relevant policies in the Framework.

Issue 5-The Kent Downs AONB

108. Paragraph 177 of the Framework advises that when schemes for major development in an AONB are under consideration they should be refused other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.
109. The Framework advises that this consideration should include an assessment of three matters:
- the need for the development including national considerations and the impact of permitting or refusing it on the local economy,
 - the cost of, and scope for, developing outside the designated area, or meeting the need in some other way, and
 - any detrimental effect on the environment, the landscape and recreational opportunities and the extent to which that could be moderated.

a) Need and the Economic Case

110. The appellant's economic case reflects the scale of their ambition in seeking to develop the English wine market for sparkling wine which is currently dominated by foreign competition. In pursuing this goal the appellant has embarked on a considerable investment programme on their estate expanding the area of vineyards from 540 acres to include a further 570 acres. This would make it the largest vineyard in the UK, in a new and growing sector of the economy. The appellant considers that the scheme would celebrate the importance of wine making, acting as a catalyst for its continued growth and contribution to the national economy.
111. The proposed winery would add capacity to the appellant's existing winery in Luddesdown which has a capacity of around 700,000 litres and which cannot be expanded due to physical constraints. The current and committed vineyard planting requires three times that capacity; a situation referred to as the 'ticking clock' by the appellant.
112. A preliminary outline economic report²⁸ prepared on a 'high level basis' derived from growth plans from the appellant's French vineyard identifies the economic benefits of the appeal scheme as around £21.3 million direct GVA and £42.6 million indirect GVA on the wider economy with an enduring contribution of around £112m by 2030 converting to around 1,000 jobs for the Medway economy. It estimates that there would also be an enduring economic benefit

²⁸ G Smith PoE Appendices

through the creation of 50-100 jobs and training opportunities arising from the Skills and Employment Plan included in the S106. In contrast the suggested fallback position, described below, would result in only a £9.6m contribution to GVA.

113. These are high level figures which do not allow for their critical assessment required for the purposes of Paragraph 177a). The report itself makes reference that a full detailed report could be prepared in support of the application. However, this is not before me.
114. I recognise that the officer's report to Committee gave considerable weight to this matter. However, these figures do not identify national considerations in support of this scheme. The assumptions which underpin them are not sufficiently robust nor do they fully reference the economic case for the other options referred to in this appeal. The need for this scheme in the context of the local economy has not been conclusively made.

b) Costs

115. The appeal scheme represents an investment of around £30 million. This compares to the fall back position of around £5 million²⁹; a reflection of the appellant's ambition. Costs of developing outside the area, possibly on an industrial estate were not presented, despite this being a feature of other English wine producers.
116. Whilst the capital costs of the appeal scheme would be considerably more than the fallback position, the appellant has not provided a business plan which allows comparison of the likely cost implications of the transport arrangements required, their impact on wine quality, price and profitability.
117. The appellant's suggested 'fallback' position requires Prior Approval from the Council. Indicative drawings submitted by the appellant include nine buildings of basic design being located around a central service yard, directly accessed from Bush Road on the western edge of Cuxton and in close proximity to the North Downs path. The site lies in the AONB.
118. The requirement for Prior Approval would require an application to the Council involving consideration of matters such as siting, design and location. It is not my place to attempt to second guess a decision of the Council if this option were pursued by the appellant. However, many of the same considerations would apply to a decision on the Prior Approval as apply to this appeal for a scheme within the AONB.
119. Although the appellant's landscape witness offered her view on this option as likely to give rise to a more industrial form of agricultural building than the appeal scheme these views were not detailed in an LVIA. This would have allowed direct comparison of its landscape and visual effects with the appeal scheme given that it lies in the AONB where the same considerations would apply as to the appeal site.
120. A further matter which potentially undermines the suggested fallback relates to its deliverability within the suggested time frame required by the appellant's 'ticking clock'. Even if the Council's suggested timescale is inaccurate the appellant acknowledged that it would take some years to build. It is unlikely

²⁹ ID27

that this option would be completed in time to provide sufficient wine processing capacity within the required timeframe. For these reasons, I accord only limited weight to this option.

121. In respect of the third option involving the wine processing off site, outside the AONB, possibly on an industrial estate no cost figures have been provided to allow comparison between capital and revenue costs although the appellant indicated that additional costs would arise from its provision, processing and transport.
122. In the absence of detailed figures in respect of the capital and revenue costs of each option it is not possible to fully compare the suggested options with the appeal scheme as required by Paragraph 177b) of the Framework. I conclude therefore that the assessment has not been satisfactorily completed to demonstrate that the total costs of the scheme would be considerably cheaper when compared to other options.

c) Environmental effects

123. In preceding sections of this decision, I have highlighted the detrimental impacts of the proposed scheme on the landscape and the Upper Bush CA.
124. However, I recognise that the design of the winery reflects the exigencies of its landscape context. This is reflected in its convex design which is reinforced through the extension of proposed chalk grassland planting which would flow from the edge of the vineyard over the roof of the building.
125. Furthermore, the building has been designed to achieve 'outstanding' BREEAM30. Measures which would be incorporated into the design include energy and carbon reduction methods, water efficiency and recycling, waste reduction through the inclusion of the energy centre and air quality improvement measures. Furthermore, the Framework Travel Plan would assist in reducing the likely movement of private vehicles to the site and pollution levels.
126. The scheme includes a significant biodiversity net gain derived from a 14% habitats unit net gain and 864% hedgerow net gain arising from 2km of new native hedgerow planting and 5.4 hectares (ha) of chalkland grassland. It is anticipated that the proposed tree planting would achieve around 2.8 ha and could support the delivery of Net Zero Carbon by 2050. The building would have a net carbon design for both operational and embodied carbon which would ensure that by Year 31 it would become a net carbon sink.
127. No rationale has been provided as to why these or similar measures could not be secured through the delivery of the 'fall back' position.
128. I accord no weight to the following environmental benefits of the scheme suggested by the appellant:
- the removal of pylons as this is not included in the appeal scheme, and,
 - residents use of the appeal scheme's car park. No details have been provided on whether there is a parking issue for local residents and how such a scheme could work.

³⁰ Building Research Establishment Environmental Assessment

129. In respect of the range of measures included in the S106 which include investment in new footpaths, some of which would be public and a traffic study for the local area, I accord these a neutral value given that they are required as a form of mitigation for the appeal scheme.
130. I acknowledge however that other proposed footpath improvements both within and around the appellant's estate would support recreation in the area. But these would not overcome the harm arising from the scheme's landscape and visual effects on users of the existing footpath network.
131. The appellant's case in respect of both its costs and economics is insufficiently detailed to allow me to make a thorough assessment as required by Paragraph 177 of the Framework. Whilst I have no doubt that the appeal scheme could contribute to the local economy there is insufficient evidence before me to support a thorough comparison of the options.
132. Policy BNE32 sets out a range of criteria against which schemes for major development within the AONB would be considered. These include Policy BNE32(v) which has regard to the environmental standard of the proposed construction. I acknowledge the importance of the delivery of a building which could achieve an 'outstanding' score for the BREEAM assessment which would in part address this aspect of the policy.

Conclusions

133. Policy BNE32 sets out a number of criteria against which applications for major development should be assessed. These are broadly similar to Paragraph 177 of the Framework which is prefaced with a reference to a need for the development in the public interest.
134. Whilst BNE32(v) could be met, I am not satisfied that the policy's other tests related to the national need, impact on the local economy, costs and landscape impacts would be satisfactorily achieved based on the evidence before me. Accordingly, I conclude that the appeal scheme conflicts with Policy BNE32 overall.

Planning Balance and Conclusions

135. In arriving at my overall conclusions balances are required in respect of Green Belt, Heritage and the AONB and an overall planning balance as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Green Belt

136. The site lies in the Green Belt but falls within one of the exceptions included in Paragraph 149a), a building for agriculture. By virtue of this it cannot therefore be regarded as either harmful to openness or to the purposes of including land within the Green Belt.

Heritage

137. There are two heritage assets that need consideration in the Heritage Balance. The first relates to effect of the proposal on the CA and the second to the archaeological remains.
138. I find that the proposed winery would lead to less than substantial harm to the significance of the CA, as a designated heritage asset. Whilst the harm would

be less than substantial and lies within the moderate range of that scale of harm, I find that the extent of harm arising would not be overcome by the range of economic and environmental public benefits suggested by the appellant. Because of my concerns above and the implication for Section 72 of the Planning (Listed Buildings and Conservation) Act 1990 I am not persuaded by the appellant's arguments.

139. I find that there is insufficient evidence to support the classification of the archaeological remains as an Ancient Monument. For this reason, they are considered as a non-designated heritage asset. Paragraph 203 of the Framework requires that a balanced judgment is required having regard to the loss of and significance of this asset. Although the scheme would involve the loss of this asset the remains are of only limited significance and the merits of the scheme outweigh the harm arising to this asset.

The AONB

140. The essential purpose of AONB designation is to conserve and enhance their natural beauty for both the present and future generations³¹. This is the starting point for consideration of applications for major development within the AONB, amplified in Paragraphs 176-177 of the Framework which requires that great weight is given to the conservation and enhancement of their landscape and scenic beauty.
141. There is a presumption that development within these areas should be limited and that major development should be refused other than in exceptional circumstances where it can be demonstrated it would be in the public interest. This consideration is informed with reference to need and economic value, cost and impacts on the environment.
142. I am not satisfied that a need for the scheme has been established. Expansion of the wine industry is not a national priority. Neither is it a local priority reflected in planning policy.
143. The appeal scheme could contribute to the local economy resulting in additional job creation and training opportunities. However, additional jobs and training could be supported by a new winery irrespective of its location. The appellant's desire to revolutionise the English wine industry, would not be dependent on the creation of a 'wine experience' at this site but instead simply requires an expansion of processing capacity which could possibly be delivered through other options. These have not been fully explored nor have the full costs of the alternatives
144. In respect of the environmental implications of this scheme it would result in landscape and visual harm arising from its size and location in a secluded part of the Bush Valley. Whilst the level of harm would be mitigated to a degree by the building's design, its 'outstanding' BREEAM and its contribution to BNG, it is a large building visible from sensitive receptors and includes a new access, road and large car park which would result in adverse landscape and visual effects with adverse impacts on perceptual qualities.

³¹ CD 0.1.15

The planning balance

145. I acknowledge that the appeal scheme would meet a range of policies in the Development Plan but it does not comply with policies BNE12, BN14 and BNE32 of the Medway Local Plan 2003. Despite their age these policies reflect important considerations regarding designated heritage assets and the AONB to which I attach considerable weight. These policies are consistent with the Framework.
146. Whilst the appellant advances an argument that overall, the balance of policies leads to a decision to allow this appeal I find that such an approach would be inconsistent with these adopted policies and Paragraphs 176 and 177 of the Framework.

Conclusions

147. The Framework and adopted policy recognise that great weight should be afforded to conserving and enhancing the landscape and scenic beauty of the Kent Downs AONB. It recognises that these are special areas with important distinguishing features. At the heart of this decision is a requirement that major development in the AONB should be in the public interest.
148. The appellant has suggested measures by which the public interest would be supported. These include investment, job creation and training opportunities, an innovative and exciting building designed by a world renowned architect and an opportunity for visitors to enjoy a unique wine experience.
149. In practice the substance of the investment case is not supported by a robust capital investment analysis or business case and whilst the proposed building is innovative it is only part of the scheme before me. The absence of robust evidence of costs for each option diminishes the case on why the location of the appeal scheme is to be preferred.
150. During the Inquiry, there was a significant focus on the aesthetic grace of the proposed winery building which the appellant sought in part to justify the public interest case for the scheme. I acknowledge that good design should be at the heart of the Planning System as required by the Framework but the scheme before me involves other elements leading to harm to both the particular qualities of the AONB and the CA.
151. Finally, without exception the appellant team referred to the intrinsic value of the 'wine experience'. This was not clearly defined in evidence although witnesses referred to links between the site's geology, terroir, the growing and wine producing process and the product itself. This is a matter to which negligible weight can be attached given the lack of clear evidence on this point.
152. The English 'wine revolution' which this scheme seeks to stimulate could in practice be addressed by development outside the AONB and beyond the setting of the CA. The public interest case for why exceptional circumstances might exist in this case has not been satisfactorily made.
153. I recognise that this outcome will be disappointing to those members of the public who expressed support for the scheme. The views of local people, very important though they are, must be balanced against other considerations, including national and local planning policy. In coming to my conclusions on the various issues that have been raised, I have taken full and careful account

of all the representations that have been made, which I have balanced against the provisions of the development plan, the National Planning Policy Framework and other material considerations. In this case the evidence leads me to the view that the appeal should fail.

Stephen Wilkinson

INSPECTOR

Annex A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Dr Ashley Bowes, King's Counsel assisted by Mr Rowan Clapp of Counsel for the Authority	Instructed by Ms Joanna Horne, Planning Solicitor to Medway Council
He called	
Mr J. Etchells MA, BPhil, CMLI	Landscape Architect
Ms K. Miller BSC(Hons), DiP TP MRTPI	Planner, The Kent Downs Conservation Board
Mr K. Wedd BA (Hons), IHBC, FRSA (Heritage)	Heritage
Mr M. Lowndes, BA(Hons), DiP TP, MSc, MRTPI	Planning Consultant, Lichfields

FOR THE APPELLANT:

Mr S. White, King's Counsel for the appellant assisted by Mr M Henderson for the appellant	Instructed by Mr Sensecall of Carter Jonas LLP
He called	
Mr G. Smith	CEO of Vineyard Farms
Mr G. Robinson BA (Hons), Dip Arch, RIBA	Senior Partner Foster and Partners,
Mr J. Bevis MEng, MAUD, CMILT, MCIHT	Partner i-Transport
Ms G. Stoten BA(Hons), MCiFA, FSA	Heritage Executive Director at Pegasus Planning Group
Ms C. Brockhurst FLI, BSc (Hons)	Director of Leyton Place Limited,
Mr S. Sensecall Dip TP MRPTI	Partner at Carter Jonas LLP

FOR THE RULE 6 PARTY: Cuxton Parish Council and Cuxton against the Winery:

Mr P. Patterson	Lead for the R6(6) party and Heritage
Mrs K. Hutchfield	Transport
Mrs A Gray	Green Belt

INTERESTED PERSONS:

Cllr S Curry	Councillor for Medway Council
Mr I Gray	Resident
Mr P Badman	Resident

Ms S Pinkstone	Resident
Mr I Hargreaves	Resident
Mr P Gummer	Resident
Mr D Rebold	Resident
Ms F Grigg	Resident
Ms A Weaver	Resident
Mr K Slucock	Resident
Ms L Barker	Resident
Mr Macdonald	Resident

Annex B

List of Inquiry Documents

ID1	Appellant's Openings
ID2	Council's Openings
ID3	R6(6) Openings
ID4	Landscape Scott Schedule
ID5	Legal Opinion from Ms Noemi Byrd of Counsel
ID6	Statement of Councillor Curry
ID7	Statement of Mr K Slucock
ID8	Statement of Mr D Revell and Mr P Gummer on behalf of residents of Upper Bush
ID9	Statement of Mr M Wells delivered by Ms F Grigg
ID10	Statement of Mr Hargreaves
ID11	Statement of Mr I Gray
ID12	Statement of Ms Pinkstone
ID13	Statement of Ms L Baker on behalf of M P Sutton
ID14	Statement of Mr J Emery
ID15	Statement of Mr Badman
ID16	Statement of Ms A Weaver
ID17	Additional figures form Mr I Hargreaves
ID18	Statement of Ms K Hutchfield for the Transport RT
ID19	Letter from Mr and Mrs Caitlin
ID20	CIL compliance schedule
ID21	Draft S.106 Agreement
ID22	Q/A from R6(6) with responses following the RT on Transport
ID23	Additional Statement from Ms Gray on behalf of the R6(6) party on Green Belt
ID24	Additional Statement from Mr Pattison for the R6(6) party on Heritage
ID25	Site visit itinerary
ID26	Note on HGV movements from i-Transport
ID27	OED definition of a 'shaw'
ID28	Email from Mr Hargreaves on Dark Skies 25 March 2023
ID29	Appellant's note on Costs of the appeal scheme and the 'fallback'