

Delegated Report

Prior Approval Application

Application No:	20240544
Location:	Land At Cobham House Vineyard, Gold Street, Cobham, Gravesend, Kent, DA12 3AA
Description:	Application to determine if prior approval is required for a proposed; Erection of a winery building and hardstanding for Agricultural or Forestry use of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 6.
Applicant:	Mr Sengupta, Cobham House Vineyard Ltd
Site Visit:	22 nd July 2024

Submitted Documents/Plans

- Application Form – dated 17 June 2024;
- Planning Statement (ref. 0431);
- Supplementary Information – Noise Impact Assessment by Chris Wood Acoustics (ref. 231_02R_1-0_CWA) – dated 05 June 2024;
- Supplementary Information – Lighting Design Report by Alan Tulla Lighting – dated 14 June 2024;
- Supplementary Information – Noise Impact Assessment Addendum by Chris Wood Acoustics (ref. 231_01M_1-0_CWA) – dated 26 September 2024;
- Supplementary Information – Highways and Transport Rebuttal Statement by GTA Civils and Transport (ref. 12953) – dated September 2024;
- Supplementary Information – Vinescapes Operational Addendum;
- Supplementary Information – Landscape and Visual Impact Assessment Rebuttal Statement by terrafirma – dated 26 September 2024;
- Supplementary Information – Landscape and Visual Evidence and Appraisal (vol 1) by terrafirma (ref. 2537-TFC-00-ZZ-RE-L-8001) – dated September 2024;
- Supplementary Information – Landscape and Visual Evidence and Appraisal (vol 2) by terrafirma (ref. 2537-TFC-00-ZZ-RE-L-8002) – dated September 2024;
- Unnumbered Location Plan – Site Location Plan (scale – 1:1250);
- Drawing no. 10600 – Rev. 03 – Proposed Block Plan (scale – 1:500);
- Drawing no. 10650 – Rev. 00 – Proposed Block Plan with Additional Planting and Visual Mitigation;
- Drawing no. 11000 – Rev. 00 – Gold Street Land-use Areas;
- Drawing no. 20050 – Rev. 04 – Basement Floor Plan – Proposed;
- Drawing no. 20150 – Rev. 04 – Ground Floor Plan – Proposed;
- Drawing no. 20250 – Rev. 04 – Mezzanine Floor Plan – Proposed;
- Drawing no. 20350 – Rev. 04 – Roof Plan – Proposed;
- Drawing no. 50050 – Rev. 07 – South and West Elevations – Proposed;
- Drawing no. 50150 – Rev. 07 – North and East Elevation – Proposed.

Relevant Planning History

Reference	Description	Decision	Decision Date
20240375	Application to determine if prior approval is required for a proposed; Erection of a winery building and hardstanding for Agricultural or Forestry use of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 6.	PRIOR REFUSED	20.05.2024
20231258	Application for a determination as to whether prior approval is required for the erection of 1 no. winery building and hardstanding.	PRIOR GRANTED**	03.01.2024
20230899	Application for a determination as to whether prior approval is required for the erection of 1 no. agricultural storage building.	PRIOR REFUSED	20.09.2023

**This decision was subsequently quashed by the High Court.

Development Plan

Section 57(1) TCPA 1990 provides that planning permission is required for “the carrying out of any development of land.” By section 58(1)(a) TCPA 1990, planning permission may be granted by a development order made by the Secretary of State under section 59 TCPA 1990. By section 60(1) or 60(2) TCPA 1990, planning permission may be granted by development order either conditionally or subject to limitations as specified in the order or unconditionally. Subject to Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Part 6 of Schedule 2 makes provision for permitted development on land used for agricultural and forestry purposes.

The application is made under [Schedule 2, Part 6 of The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(as amended\)](#). 'Agricultural unit' means “agricultural land which is occupied as a unit for the purposes of agriculture”, see [Schedule 2, Part 6 of The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(as amended\)](#).

Permitted development rights allow certain changes – or “developments” – that would normally require one to apply for planning permission to be carried out without one having to apply for planning permission. However, Prior approval is required for some change of use permitted development rights, such as this application. The tests for the Local Planning Authority to consider in determining whether prior approval is required falls under the criteria in [Schedule 2, Part 6 of The Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(as amended\)](#).

The tests are whether or not prior approval is required as to the siting, design and external appearance of the buildings and, in the first instance, whether the buildings as proposed are in any event permitted development or whether planning permission is required.

The site is within the Green Belt, but Green Belt policy in the NPPF (2024) indicates that one of the exceptions to inappropriate development is new buildings for agriculture and forestry. The site is also within the Kent Downs National Landscape (previously referred to as Area of Outstanding Natural Beauty), in the National Planning Policy Framework (NPPF) (2024), National Landscape are defined as areas legally

designated as areas of outstanding natural beauty under the National Parks and Access to the Countryside Act 1949 and Countryside and Rights of Way Act 2000.

The Levelling Up and Regeneration Act (LURA) introduced a notable change for National Landscapes, which became effective from 26th December 2023. This relates to the responsibilities of any 'relevant authority', as referred to by the Countryside and Rights of Way (CROW) Act 2000, when discharging a function that affects a National Landscape. Relevant authorities include Gravesham Borough Council. The amendment, which only affects England, is as follows: Countryside and Rights of Way (CROW) Act 2000, Section 85 - General duty of public bodies: *"Any relevant authority exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty."*

Relevant national policy related to National Landscapes in the NPPF (2024) is contained in para 189. It states, *"Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and National Landscapes which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas."*

At Para. 190, the NPPF (2024) goes on to state that, *"when considering applications for development within National Parks, the Broads and National Landscapes, permission should be refused for major development (For the purposes of paragraphs 190 and 191, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined) other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:*

- (a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*
- (b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*
- (c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."*

The application relates to a holding of 11.51 hectares of land which is used for the planting of vines to grow grapes, as well as traditional farming such as arable, which is an agricultural use. It is noted that the NPPF (2024) does not utilise the same definition as the [Development Management Procedure \(England\) Order 2015](#), to define 'major development' in the context of Para 190 of the NPPF, but leaves the matter to the planning judgement of the decision maker, taking into account the nature, scale and setting of the proposal and whether it could have a significant adverse impact for which in this instance the Kent Downs National Landscape has been designated.

The Kent Downs National Landscape, first designated in July 1968, covers some 340 square miles, stretching from the Surrey Hills to the coast. It also contains 38 Sites of Special Scientific Interest (SSSIs), including three nature reserves, the North Downs beech-yew woodlands and a stretch of the chalk cliffs. The Kent Downs Area of Outstanding Natural Beauty (AONB) Management Plan 2021-2026 (currently under review) sets out the shared vision of the future of this special landscape. The plan identifies the key issues, opportunities and threats facing the landscape and sets out aims and principles for the positive conservation and enhancement of the Kent Downs for a five-year period, and fulfils the requirements of the Countryside and Rights of Way Act 2000.

The first test is whether the buildings would fall within the provisions of Article 3 of and Part 6 of schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015, as amended.

Relevant Local and National Planning Policies

Gravesham Local Plan Core Strategy (2014)

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS12 – Green Infrastructure
- CS19 – Development & Design Principles

National Planning Policy Framework (2023)

- Section 11 – Making effective use of land
- Section 12 – Achieving well-designed and beautiful places
- Section 13 – Protecting Green Belt land
- Section 15 – Conserving and enhancing the natural environment

Supplementary Planning Guidance

- Gravesham Landscape Character Assessment (2009)
- The Kent Downs Area of Outstanding Natural Beauty (AONB) Management Plan 2021-2026

Consultations, Publicity and Representations

Representations received during the application process are published on the Council's planning portal 'Public Access' and have been taken into consideration in determining this application, where relevant material considerations are raised.

External Consultees

Kent County Council Highways – I have the following comments to make with respect to highway matters :-

Firstly I would like to point out that under our protocol arrangements Kent Highways would not normally respond to consultation requests for minor proposals on unclassified road such as this. However, I will provide you with a few informal comments in view of the major response you have had to this application.

Secondly, this is a Prior Approval application submitted under Schedule 2, Part 6 of the GPDO which I understand only considers the siting, design and external appearance of the building and access and traffic generation matters are not up for consideration. Because of this, no transportation details such as means of access, vehicle numbers and types, access road issues etc. were not submitted with the application. I therefore have little information to base any highways impact on.

However, I note that the applicant has submitted a "Rebuttal Statement – Highways and Transport" produced by GTA Civils and Transport dated September 2024 which contains some brief information on which I base my comments.

The application building is to be accessed off a minor unclassified lane, Gold Street which is relatively narrow in width, and which has limited forward visibility and is subject to the national speed limit of 60mph. A traffic survey taken in September 2014 indicates that 85th %ile speeds on the lane are low with measured speeds of 23 / 21 mph in each direction. There appear to be adequate passing places along the road to enable larger vehicles to pass.

The number of vehicles using Gold Street currently is also relatively low with the survey indicating an average total of 497 two-way movements per day and peak flows of 10 vehicles per hour eastbound and 15 – 20 vehicles per hour westbound during the peaks. These numbers are considered to be low even considering the type of road.

Taking the above measured speeds, it is expected that visibility splays of 2.4m x 30m in both directions with no obstructions over 1.05m high. These splays would be achievable since the land alongside Gold Street is under the control of the applicant although some hedge trimming may be necessary.

There are no personal injury crashes recorded on any of the local roads in the last 5 years so it is not considered that poor highway safety is currently an issue.

The likely traffic generation and distribution from the proposed development is not available in the applicant's submitted information although the GTA report has suggested that the TRICS database could provide an indication, although little relevant data is available. The traffic generation is likely to vary according to the season with September / October being the busiest time. It is not anticipated that vehicles exceeding 7.5 T are to be used.

I do have concerns regarding the unsustainable location of the site, but this is a rural activity that is proposed. If this were a full planning application I would expect to see a Travel Plan being submitted with the application with possible a suggestion that a mini-bus shuttle is provided to transport employees to and from the nearby public transport hubs.

In conclusion, and accepting that little information is available from the applicant on transportation matters, I would not expect to raise an objection to this application if it were a full application but this is totally subject to the receipt of further information regarding traffic movements from the applicant.

INFORMATIVE

It is important to note that Local Planning Authority (LPA) permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because LPA planning permission has been granted.

For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture or landscape assets such as grass, shrubs and trees, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens and near the highway that do not look like roads or pavements but are actually part of the public highway.

Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council Public Rights of Way – Public footpath NS190 runs to the east of the application site and thus may be affected by the application, and I therefore enclose a copy of the Public Rights of Way network map showing the definitive line of this path for your information.

It is noted that on the latest application a new entrance to the west of NS190 has been proposed. This is a positive move as this will remove any issues we would have had with traffic entering the site over the footpath. It would be prudent if site traffic is going to cross the path that notices are erected to warn of the pedestrians using the path.

It is important to advise the applicants that a public right of way must not be stopped up, diverted, obstructed or the surface disturbed and there must be no encroachment on the current width, at any time now or in future. This includes any building materials or waste generated during any of the construction phases. Please note that no furniture or fixtures may be erected on or across Public Rights of Way without the express consent of the Highways Authority.

Kent Downs National Landscape Management Group – Attached as Appendix 1.

Following the receipt of Kent Downs National Landscape Management Group comment, the Local Planning Authority sought clarification on their position in relation to whether the application should be refused under the GPDO and for any case law evidence to support the viewpoint (contrary to the Millington judgement). The below is the response received:

- Second Comment (11 November 2024) – The National Landscape Team raised it as an issue as we think that the Millington Case is ambiguous on whether all winery proposals fall within the remit of an agricultural building given the very clear proviso in the Supreme Court decision that the decision fell on the particular circumstances of that case and in particular the small scale of the premises involved. It is our common-sense approach that making wine on the scale proposed at Gold Street, is an industrial process like, for instance, manufacture/processing and packing of other food and drink products.

As the determining planning authority, Gravesham will need to reach its own view on this matter. However, in light of your email, and in view of the increasing number of wineries being proposed in the Kent Downs, we have asked for advice from KCC legal services on this issue (the Kent Downs NL Team is hosted by KCC) with a view to potentially commissioning advice from Counsel on the matter.

(To date no further information has been provided by the National Landscape Team to the Local Planning Authority)

Cobham Parish Council – We do understand that under General Permitted Development, an agricultural building will be required to support the vineyard. However, the location and size of this building are the main reasons for our objection.

- *Location* - This is metropolitan green belt and a National Landscapes (AONB) area, and the size of the planned building is very large in relation to the acreage of the land and will have a significant negative impact on the current amenity and open views in the area.

The new (revisited) proposed siting has the worst possible visual impact on enjoyment of the AONB, now National Landscapes area.

This is the highest point of the field. This location would be visible from Sole Street, Greenlands and Gold Street.

To locate it so close to the only two properties that abut this field is also hugely inconsiderate on those residents and those nearby in Gold Street.

Cobham Parish Council would like to see the building located closer to the railway line end of this field, away from the highest point of the land and as far away from any residential properties as other restrictions will permit.

We appreciate that the owner did attempt to achieve this in previous application 20240375. However, that location was also very visible from Gold Street and the surrounding area and also had a significant impact on the visual amenity.

We would support a location as close to the railway line as possible and then also partially hidden by the roadside treeline in that area.

We would like to see a reduced building size to lessen the impact on the landscape and views in the area. With a ridge height of 9.3 metres this would be the tallest building in the area.

This would then allow the owner more flexibility in attempting to partially hide the building behind the existing tree line to reduce the impact to the AONB.

- *Noise* - The site is expected to yield 50,000 bottles per year. From a movement and storage aspect, glass bottles are extremely noisy items to move around. Again, this would lead you to hope for a location as far away as possible from any existing properties.

The external chiller plant noise is also something that should be located as far away as possible from any residential properties.

There is no mention of a forklift vehicle in the noise assessment report, and we would expect this to be a necessity for wine production. The safety backup alarm of a forklift moving is something we would have expected to see in the noise assessment. This also leads us to feel that location of the building should be as far from any existing properties as possible to reduce any potential noise issues.

- *Traffic* - Across the documents submitted and other related information, there are 3 versions of the expected volumes of traffic:
 1. An email from the applicant to Cobham Parish Council in February 2024 indicated the owner was expecting to employ 10/15 people, and thereby benefitting the local community by providing jobs. We did express concern at this number of vehicles onsite, hardstanding requirements and vehicle movements at a site meeting with the owner, and we were told that most staff would arrive by train to the nearby Sole Street railway station, and then walk to site.
 2. Noise Assessment Section 8.4 – No more than 5 staff plus deliveries and collections.
 3. Vinescape Report – Two full time staff plus one more at certain times of the year. This significant variation in staffing numbers does cause some concern for us on what the traffic volumes will be. And whether other facts and figures in the supporting documents are not a true indication of the reality of working vineyard and the impact to local traffic and those enjoying the amenity of the AONB area.

Points also raised by CPC in previous application 20240375 are all still valid.

To summarise, Cobham Parish Council are primarily strongly opposed to the location of the building in this application.

Second Comment (20 September 2024) – It has come to our attention that the deadline for determining the above application has been extended following an exceptionally large number of objections, totalling approximately 320, and your receipt of several technical reports. These indicate very widespread public concern that the proposed siting of the development within the designated National Landscape has seriously adverse consequences upon it.

We are writing to you to record our extremely serious concerns that approval of this application will place Gravesham Borough Council in breach of its statutory duty, under Section 85 of the Countryside and Rights of Way Act (CROW), "to seek to further the purpose of conserving and enhancing the natural beauty of any landscape with an AONB designation, such as the Kent Downs." This legislation came into force in December 2023 and places an active duty on the Council to avoid harm. We note that you are not in receipt of any consultation from the Kent Downs National Landscape. As you are unable to demonstrate due regard to your active duty you should, as a matter of urgency, ensure an assessment is undertaken by the Kent Downs National Landscape. The nature of the planning application, whether it be a 'prior approval' (GPDO) or a full planning application, is not an assurance of avoiding harm to the National Landscape and does not provide an exemption from Section 85 duties.

The application proposes a large building to be erected, with impacts from associated and ancillary activities, and disturbance, at the top of a hill in the North Kent Downs. The Kent Downs are noted and valued for their hills. It is proposed this should take place at such an elevation that it will be visible from 5 different Public Rights of Way, including one located 1.3km away in the National Landscape, and another that it bisects and where it gives rise to serious safety concerns. It is further proposed that this should take place at a sensitive village boundary that forms a highly valued landscape in the character of that settlement.

As these are matters of fact, we urge you ensure that a competent assessment is conducted by the Kent Downs National Landscape Team, or alternatively, you must refuse this application to avoid failing to comply with your statutory duty to further the conservation and enhancement of a protected National Landscape.

Third Comment (29 April 2025) – Cobham Parish Council writes regarding the proposed winery development at Cobham House, Gold Street, situated within the Kent Downs National Landscape (formerly AONB). Given the area's nationally recognised environmental sensitivity and the level of public concern, we respectfully urge the Council to issue a formal Environmental Impact Assessment (EIA) screening opinion under Regulation 6 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, if one has not already been completed.

We believe the protracted and highly contentious nature of this application—marked by repeated extensions since June 2024 in response to significant public concern—arises from the fact that the issues raised clearly extend well beyond the limited scope of permitted development rights under the 2015 GPDO Schedule 2, Part 6, Class A.

In our view, the difficulty in addressing this application coherently and in a timely manner stems from the absence of a structured Environmental Impact Assessment, which would provide a comprehensive framework for considering the full range of environmental, operational, and cumulative impacts. We believe this to be the correct policy prescription for the challenges the LPA continues to face in dealing with this application.

We would further emphasise that the General Permitted Development Order (GPDO) is not intended to operate as a shortcut to full planning permission such that essential environmental safeguards are evaded.

While certain developments may proceed under permitted development rights, those rights are conditional and do not override statutory protections afforded to designated landscapes or exempt proposals from compliance with environmental law. In particular, the GPDO cannot displace the legal requirement for EIA where there is a likelihood of significant environmental effects. It is essential that any such development be subject to proper scrutiny, especially where nationally protected landscapes, biodiversity, and public interests are at risk.

If a screening opinion has already been issued, we respectfully request that it be revisited in light of the Council's statutory duty under Section 85 of the Countryside and Rights of Way Act 2000, which imposes a clear legal obligation on decision-makers to have due regard to conserving and enhancing the natural beauty of designated landscapes.

We appreciate the complex balance required between enabling appropriate rural development and protecting irreplaceable landscape assets. This letter is submitted in a constructive spirit, seeking to help the Council meet its obligations while addressing the exceptional level of public concern and the environmental implications raised by this application.

Grounds for EIA Screening Request

1. Schedule 2 Threshold Exceeded - The proposal exceeds the 1,000 m² internal floor space threshold under Schedule 2, Category 7 of the EIA Regulations 2017. The applicant confirms that the total internal floor area is approximately 1,140 m², and the facility includes grape processing, fermentation, bottling, and distribution—uses that fall within Schedule 2, 7(b)/(d). This scale clearly triggers the requirement for formal EIA screening.
2. Section 85 Duty Is Central to Lawful Decision-Making - There is no public documentation confirming that the Council has actively applied its Section 85 duty in this case. As this is a statutory duty, not a discretionary consideration, we believe that reassessing the development through the EIA framework would be a proportionate and legally appropriate step, particularly given the National Landscape designation.

Environmental Concerns Supporting the Need for Screening The environmental concerns are numerous and we will not address them all here, suffice to say the extend to:

- **Odour and Wastewater Management** - The projected volume of wastewater—potentially up to 1.35 million litres annually—raises material concerns. Fermentation processes pose a risk of odour pollution and groundwater contamination. No drainage or odour mitigation strategy has been proposed.
- **Landscape and Visual Impact** - The site is prominently located and visually exposed from public viewpoints, including Public Right of Way NS190. Independent assessments and local submissions highlight the likely harm to tranquillity, dark skies, and rural character, all of which are core attributes of the National Landscape designation.
- **Lighting Impacts** - Failure to consider visual prominence and light spill due to elevated siting and building height, throughout the 24hour period. The site lies within an E1 dark sky zone. No lighting strategy that accounts for all public and commercial traffic, and ecological impacts has been submitted.
- **Biodiversity and Protected Species** - Local records and reports indicate the presence of badger setts, bats, owls, and other protected species. The precautionary principle under EIA Regulations has not yet been engaged. No ecological surveys have been provided.
- **Noise Impacts** - A professional technical rebuttal of the applicant's acoustic data indicates a serious underestimation of bottling-line noise, dismissal of all other impacts and assumptions about noise levels that are not consistent with any known published sources, including government data on the activities intended to take place. Thus, the application wrongly evades BS 4142 penalties, effects on tranquillity, or the impact on users of the public rights of way network and the wider area.
- **Traffic and Public Safety** - We note the absence of any reporting of transport intensity, particularly

for public events and online sales now admitted to by the Applicant on their website. Omission of operational impacts from the noise, lighting, and landscape assessments create uncertainty on the potential adverse effects.

- Depth of Public Concern - Over 400 formal objections have been submitted, with over 700 residents participating in surveys or making written representations. These objections are evidence-based and reflect a detailed understanding of the area's environmental constraints. This development:
 - Meets the Schedule 2 threshold for EIA,
 - Is located in a sensitive and nationally protected landscape,
 - Raises multiple significant environmental issues, and
 - Has prompted an exceptional level of informed public concern.

In light of this, we believe that issuing an updated or first-time EIA screening opinion would demonstrate the Council's commitment to legal rigour, environmental stewardship, and community engagement.

By way of resolution, we respectfully request:

1. That the Council issue or update an EIA screening opinion under Regulation 6;
2. Written confirmation of whether a previous screening opinion has been issued, and if so, a copy;
3. Clarification of how the Council has applied its statutory duty under Section 85 in this case.

We would welcome further engagement on this matter and remain available to support the Council's decision-making process in any way we can. We genuinely believe the above proposal provides a justifiable opportunity to reconcile the issues raised within the planning framework.

Luddesdown Parish Council – It has come to our attention that the deadline for determining the above application has been extended following an exceptionally large number of objections, totalling approximately 320, and your receipt of several technical reports. These indicate very widespread public concern that the proposed siting of the development within the designated National Landscape has seriously adverse consequences upon it.

We are writing to you to record our extremely serious concerns that approval of this application will place Gravesham Borough Council in breach of its statutory duty, under Section 85 of the Countryside and Rights of Way Act (CROW), "to seek to further the purpose of conserving and enhancing the natural beauty of any landscape with an AONB designation, such as the Kent Downs¹." This legislation came into force in December 2023 and places an active duty on the Council to avoid harm. We note that you are not in receipt of any consultation from the Kent Downs National Landscape. As you are unable to demonstrate due regard to your active duty you should, as a matter of urgency, ensure an assessment is undertaken by the Kent Downs National Landscape. The nature of the planning application, whether it be a 'prior approval' (GPDO) or a full planning application, is not an assurance of avoiding harm to the National Landscape and does not provide an exemption from Section 85 duties.

The application proposes a large building to be erected, with impacts from associated and ancillary activities, and disturbance, at the top of a hill in the North Kent Downs. The Kent Downs are noted and valued for their hills. It is proposed this should take place at such an elevation that it will be visible from 5 different Public Rights of Way, including one located 1.3km away in the National Landscape, and another that it bisects and where it gives rise to serious safety concerns. It is further proposed that this should take place at a sensitive village boundary that forms a highly valued landscape in the character of that settlement.

As these are matters of fact, we urge you ensure that a competent assessment is conducted by the Kent Downs National Landscape, or alternatively, you must refuse this application to avoid failing to comply with your statutory duty to further the conservation and enhancement of a protected National Landscape.

Second Comment (29 April 2025) – Luddesdown Parish Council (LPC) writes to express its formal concern regarding the proposed winery development at Cobham House, Gold Street, situated within the Kent Downs National Landscape (formerly AONB). LPC urge the Council to conduct an Environmental Impact Assessment (EIA) screening under Regulation 6 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, if this has not already occurred, or to revisit any existing screening in light of recent evidence and submissions.

Given the site's location in a nationally protected landscape, and the breadth of environmental issues raised, it is difficult to understand why such a screening has not already taken place. LPC believe the failure to initiate this process earlier has contributed to the confusion, contention, and procedural delays surrounding this application since 2024. This matter should now be rectified as a matter of urgency. LPC are aware of and share many of the concerns raised by our neighbouring parish council and residents in the area. These include not only the overall environmental footprint of the scheme but also growing doubts about the adequacy of supporting assessments. Notably, LPC have seen footage and first-hand evidence indicating that the site is not suitable for large-vehicle access. In our view, the current KCC Highways assessment is flawed, and LPC believe the Council must take steps to revisit that assessment and ensure it reflects operational reality.

Why an EIA is Required - This development clearly engages multiple triggers under Schedule 2 of the EIA Regulations: The internal floor area exceeds 1,000 m², placing it under Schedule 2, Category 7 for food industry installations.

The site is located in a National Landscape, a legally protected and environmentally sensitive designation. There are substantial concerns about traffic, odour, wastewater, lighting, biodiversity, and noise — as documented in expert reports and community submissions.

Over 400 formal objections and significant local participation (700+ residents) reflect the depth and credibility of these concerns.

LPC are concerned that the Council has not yet discharged its duty under Section 85 of the Countryside and Rights of Way Act 2000, which requires all public bodies to have regard to conserving and enhancing the natural beauty of designated landscapes in decision-making

Specific Areas of Concern - LPC highlight the following issues as warranting formal environmental assessment:

- **Odour and Wastewater:** No clear mitigation strategy for the disposal of up to 1.35 million litres of winery effluent. Fermentation by-products pose odour and contamination risks.
- **Landscape and Visual Impact:** Elevated and unshielded site, visible from public vantage points including PROW NS190. The development undermines the area's tranquillity, dark skies, and rural character.
- **Lighting:** No strategy submitted for vehicle or security lighting and parking locations despite its classification as an E1 dark sky zone. This is a notable omission.
- **Biodiversity:** Evidence of protected species including badgers, bats, and owls. No ecological survey provided.
- **Noise:** Independent analysis shows serious underestimation of bottling-line and equipment noise, with no reference to BS 4142 or cumulative impacts on tranquillity.
- **Traffic and Access:** HGV access remains unresolved. Survey responses and footage (<https://youtu.be/radyg6coLXE?feature=shared>) confirm that the site cannot be accessed safely and accommodate large vehicles without risk to highways or PROWs. The KCC desktop assessment fails to reflect this and is clearly a case of administrative error.
- **Procedural Gaps:** No public explanation has been given as to why EIA screening was not initiated

earlier. The lack of clarity is contributing to procedural ambiguity and public distrust.

Our Requests - In light of these factors, Luddesdown Parish Council respectfully asks the Council to:

1. Confirm whether a screening opinion has been issued for Application 20240544
2. If not, issue one now under Regulation 6 of the EIA Regulations 2017;
3. If a screening has been issued, publish it and confirm whether Section 85 of the CROW Act was considered in that process;
4. Reconsider the validity of the highways assessment and its implications for environmental effects.

LPC remain committed to supporting lawful, appropriate development in our shared rural area. But where a proposal of this scale and sensitivity is progressing without full environmental assessment, LPC believe it is essential that the Council act decisively and transparently in the public interest.

Dickens Protection Society – The Society is concerned that this is a large building in the countryside on relatively high ground. It notes that the location has reverted to the more exposed position from the 2023 application.

In the Society's view this would impact on the openness of the Green Belt and the local landscape. In view of the site's location in the Green Belt and the North Downs Area of Outstanding Natural Beauty, the Society would suggest that the application should be called in to agree the external finishes, landscaping requirements and condition the use to that described in the application. The means of access to the building needs to be defined.

Internal Consultees

GBC Environmental Protection (Regulatory Services) –

First Comment (12 July 2024)

- *Noise Report* - The assessment methodology, which includes a BS4142 assessment, is acceptable. The report demonstrates that the operations taking place both within the building and also the noise from the externally located chiller unit will not be a problem. The chiller unit is to be located on the southern façade of the building, which is away from the houses and the building will also act as a shield for some of the noise. With regards to noise levels at the nearest residential premises, these are calculated to be below the existing background noise levels and so there will be no observed adverse impact.

Therefore, provided the development takes place in accordance with the submitted details, there is no objection on noise grounds.

- *Lighting Design Report* - this indicates that lighting levels will be in accordance with the required levels given in the ILP guidance for an E1 Environmental Zone. Again, provided the lighting is installed in accordance with the submitted scheme, there should be no problems either in terms of nuisance to the nearby residential premises or in relation to impact on the area in general.

Second Comment (26 July 2024)

Having reviewed the report by Chris Woods Acoustics (CWA) again, and also the Acoustic Memo by Lustre Consulting (LC). The following comments are made:

- *Weather Conditions* - The LC report is critical of the CWA report in that it considers that adverse weather conditions have not been considered appropriately with regards to the background noise

levels (L90). BS4142 advises that caution should be exercised when making measurements in poorer weather conditions such as wind speeds greater than 5m/s. Weather conditions are described in Table 5.2 of the CWA report and do indicate periods where wind speeds are greater than 5m/s (the accepted level for noise measurements), but in accordance with good practice guidance an appropriate wind shield was used. Measurements were taken over a period of time (7 days) which is a robust approach and weather conditions do appear to have been taken into consideration in the data interpretation section (5.17-5.20). There is no indication in the CWA report as to what location the meteorological data is from (other than the BBC website). The LC report sites 'weather in Gravesend' without a source. Weather conditions will obviously alter from place to place over any given day so unless recorded on-site, off-site data can't be deemed 100% accurate, hence a longer measurement time period being advantageous.

- *On site noise measurement* - The 2 noise surveys were not taken at the same location. The CWA measurements were taken at the edge of the application site and the LC measurement location was within the garden of Hever Cottage. The difference in site location could result in a difference in background noise measurements, as the garden site is likely to be more protected/sheltered than an open field. This could result in the lower background noise measurements reported.
- *Background noise levels* - Appropriate consideration of the make-up of the average day and night background noise levels has been undertaken in both the CWA and LCA noise reports although the end values do differ, particularly for the day:
 - CWA – day 40 dB LA90 and night 31 dB LA90
 - LC – day 35 dB LA90 and night 30 dB LA90

This could be due to the differing site location and make up (enclosed as opposed to open field)

- *Predicted Noise* - The CWA report bases this on an internal noise level of 75dB(A) (and information from Vinescapes of similar sized wineries utilising similar operational process/equipment). The LC report states that anecdotal video evidence of winery operations shows staff wearing ear protection therefore an indication of internal level being excess of 75dB(A). Reference is also made to a research paper of a Sicilian winery where levels are mid to high 80's dB(A). Without taking time research further into this, I have no knowledge of what internal noise levels are likely to be in a winery bottling plant, so cannot advise which is more accurate. It can only be pointed out that ear protection is often worn voluntarily at levels lower than 75dB(A) in commercial/industrial situations. In addition, the only accurate way to assess the noise levels would be to take noise measurement in an existing similar sized and set up of winery bottling plant.

The LC report does not make any reference to the external chiller plant.

Both reports are deemed to be satisfactory in their methodology for undertaking the background noise measurements although differing outcomes are given. This is mainly due to the differing resultant background noise levels and the approach to the anticipated noise levels from within the building. The LC report is a critique of the CWA report but does not undertake a full BS4142 assessment.

In this type of situation, it would normally be recommended that a post completion condition, along the following lines, is attached to any permission. That way if noise levels at the nearest residential premises are not as predicted, additional mitigation measures can be required and implemented.

Prior to first operation of the plant and equipment when operating at its maximum speed and output hereby approved a post completion noise survey must be undertaken at the maximum operating

speed by a competent qualified acoustic consultant. The results of the survey report shall be submitted to and approved in writing by the Local Planning Authority.

The post completion testing shall assess performance of any noise mitigation or noise control measures against the noise levels as set in the Report
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

If the post completion survey reveals that the Where the local authority's noise criteria has not been met further noise mitigation shall be implemented.

The final noise mitigation scheme shall be operated and maintained thereafter.

It is however understood that being an Agricultural Prior Approval application, that this type of condition may not be possible. If planning is concerned that the siting of the building could be an issue in terms of noise, it is recommended that the BS4142:2014 assessment is revised using noise measurements taken inside a similarly sized and set up (ie: similar equipment) of a winery bottling plant as this will provide a more accurate outcome.

Third Comment (22 October 2024)

I've reviewed both the response from CWA dated 26 September 2024 in response to the residents' consultants NIA and the recently submitted information from Lustre. I don't think there is much I can add to the comments I made in the email to you dated 26/07/2024. Both are reputable consultants and are basically critiquing each other's reports picking out areas that would have approached slightly differently (but not necessarily inaccurately). As mentioned before, the crux of Lustre's report hinges on the view that the noise levels of the winery operation used by CWA in his assessment are not high enough (referring to higher levels as per the Sicilian winery assessment).

Not being well versed in winery operations, I don't know which is more accurate. However, I would assume that the applicant knows what scale of operation is proposed and the type of equipment will be being used and has used that to inform CWA.

As advised before, the best way to address the noise issue and alleviate residents' concerns, would be to place a post completion condition on the permission. That way if noise levels at the nearest residential premises are not as predicted, additional mitigation measures can be required and implemented.

Prior to first operation of the plant and equipment when operating at its maximum speed and output hereby approved a post completion noise survey must be undertaken at the maximum operating speed by a competent qualified acoustic consultant. The results of the survey report shall be submitted to and approved in writing by the Local Planning Authority.

The post completion testing shall assess performance of any noise mitigation or noise control measures against the noise levels as set in the Report
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

If the post completion survey reveals that the Where the local authority's noise criteria has not been met further noise mitigation shall be implemented.

The final noise mitigation scheme shall be operated and maintained thereafter.

Again, as suggested before, if the matter can't be addressed this way, another option is to revised the BS4142 assessment using actual noise measurements taken inside a similarly sized and set up (ie: similar

equipment) of a winery bottling plant as this will provide a more accurate outcome in terms of actual/expected noise levels and would deal with the fact that CWA is using one set of data and Lustre are saying another set is more accurate.

Local Ward Councillors – No comment received.

Neighbour responses

Article 3, Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) does not require any neighbour consultation to be carried out. However, there were 430 representations received from surrounding residents, of which 18 were in support of the development and 410 registered objections. It should be noted that a number of the objections lodged were a duplicates and multiple responses have been received on behalf of the wider community through petitions, some with over 500 signatures. Where they raise points relevant to the decision now before the Council, these have been taken into account within this report.

The representations in support of the development raising the following considerations:

- Building designed to blend into the landscape
- Includes landscaping to soften visibility of building
- Land already cultivated and used for agricultural purposes
- Good for local business
- Good addition to the community
- Supportive of agricultural and farming activities
- Diversification of British agriculture
- Agricultural use is less impactful than residential development

The objections raised the following concerns:

- Should be a full planning application, not under permitted development – too big and too controversial
- Does not meet the requirements of permitted development – producing of wine is not included within the GPDO
- Detrimental impact on the National Landscape
- Contrary to planning policy
- Inappropriate location
- More discrete locations with applicants' ownership
- Impact on the openness of the landscape
- Out of character
- Building is too large / inappropriate scale
- Overdevelopment
- Highly visible location, clear views from public footpath
- Eyesore – fails to blend or minimise impact on area
- Colour is not appropriate
- Light pollution
- Impact on neighbour amenity
 - Light
 - Outlook
 - Noise
 - View
- Noise impact – bottling plant in Luddesdown is an example of this impact

- Failures in applicants Noise Impact Assessments
- Air and Dust Pollution
- Operating times need to be managed
- Industrial use not agricultural
- Other vineyards operate without a bottling facility
- Future expansion – shop / tours / visitor centre / events
- Underestimation of production – likely to exceed 60,000 bottles
- Plant equipment and wastewater storage will be located outside of the barn
- Disruption and impact on wildlife (including badgers)
- EIA Development – Screening required
- Traffic impacts
- Highway network (Gold St) not suitable from HGV access
- Increased risk of collision on highway through intensification of access point on a narrow country lane
- Access not to standard for this use and is dangerous on a blind bend
- Impact on the public right of way and safety of pedestrians
- No details relating to waste management
- Factual Inaccuracies / Discrepancies in documents
 - Number of employees
- Loss of property value
- Impacts arising from construction period
- Precedent for other similar developments
- Applicants' personal circumstances

The objections have been supported by a number of reports, which include; Acoustic Memos, Landscape Assessments, Highways Reports, Lighting Impact Survey and a Site Options Study. These conclude that the development would impact amenity, the highway network, the National Landscape and the wider area, and where relevant to Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, are assessed later in this report.

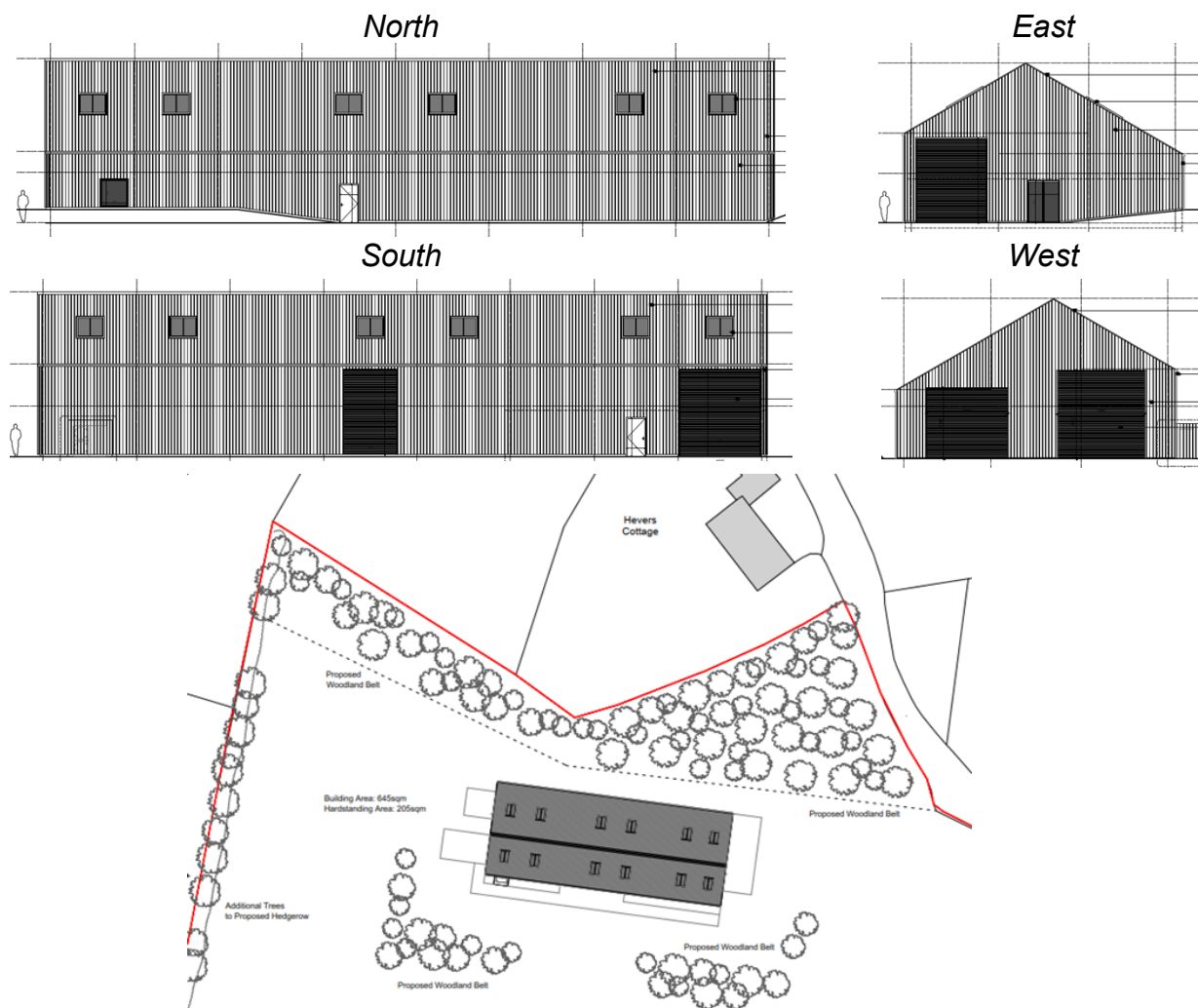
Some of the concerns raised in the representations do not form considerations for the Local Planning Authority in this application as set out in Article 3, Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Therefore, the Local Planning Authority can only consider matters relevant to this part of the Order and as such a number of concerns raised will not be interrogated within this report.

Officer's Analysis

Proposal

This application seeks determination pursuant to Article 3, Schedule 2, Part 6, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the erection of an agricultural winery building, with associated hardstanding.

The barn will be 9.3m high (at the tallest point), 40.481m wide and 15.71m deep. The barn would be constructed using black profile metal roof and black timber weatherboard cladding on the walls. There will be a number of doors into the building on the ground floor, with the majority of openings located on the Eastern, Southern and Western elevations, with the exception of a fire escape on the north elevation. The plans show one north facing window on the ground floor and 12no. Velux windows on the roof slopes.



The applicant proposes additional planting as part of the proposal, with a woodland belt buffer to the north of the building and on the southeast and southwestern edges, as well as additional trees and hedgerow along the western boundary of the site. These mitigation measures would be secured under A.2(2)(v) of Class A, Part 6, which requires development to be completed in full accordance with approved details.

The following constraints are applicable to the site:

- Metropolitan Green Belt
- Kent Downs National Landscape
- Archaeological Notification Area
- Istead Arable Farmlands Landscape Character Area

Assessment

Class A of Part 6 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) permits development consisting of the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of -

- (a) *works for the erection, extension or alteration of a building; or*
- (b) *any excavation or engineering operations, which are reasonably necessary for the purposes of agriculture within that unit.*

which are reasonably necessary for the purposes of agriculture within that unit.

This section of the report will consider if the proposal falls within the scope of permitted development set out in Class A, Part 6 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended). It is considered useful to take this in stages (conditions and prior approval aside), based on the following sections:

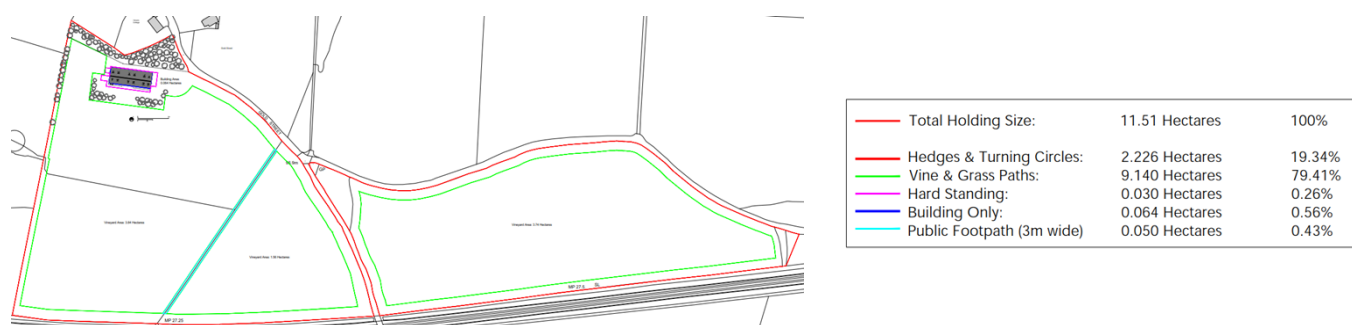
- (a) What is the agricultural unit and is it more than 5ha in area;
- (b) what is the “agricultural land” within it. Is it currently in use as agricultural land for the purpose of a trade or business?
- (c) Do the building operations fall within Class A (a) or (b) and then
- (d) is it reasonably necessary for “the purposes of agriculture within that unit”. That also probably needs taking in stages:
 - (i) Grape growing is agricultural use (s. 336)
 - (ii) As a matter of fact and degree is turning those grapes into wine part of that use (the *Millington* analysis).
 - (iii) Are the building operations “reasonably necessary” for the purposes of agriculture.

(a) What is the agricultural unit and is it more than 5ha in area;

Yes, the landholding is 11.51ha in area.

(b) What is the “agricultural land” within it;

The agricultural land within the holding equates to approx. 9.14ha, split across two fields of planted vines (as shown in the excerpt below):



The land within the holding is planted with vines, as demonstrated in the photographs below (taken 23/01/2025). Therefore, the site meets the agricultural land criteria set out in Para. D.1 of Class 6, as land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden. The land is currently growing grapes which will be process and sold as wine, and as such meets the criteria.



(c) Do the building operations fall within Class A (a) or (b):

The building operations fall within Class A (a) being works to erect a building, and (b) being excavation and engineering operations that the Local Planning Authority consider reasonably necessary for the purposes of agriculture (as set out below).

(d) Is it reasonably necessary for “the purposes of agriculture within that unit”:

(i) Grape growing is agricultural use:

"Agriculture" is defined in s336 of the 1990 Act as follows: - "agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.

Therefore, the growing of grapes (fruit) is within the s336 definition of agriculture.

(ii) As a matter of fact and degree, whether is turning those grapes into wine is part of that use.

Many of the previous cases were considered by the Court of Appeal in *Millington v Secretary of State for the Environment, Transport and the Regions* [1999] 3 PLR 118. In that case, the appellant farmer started making wine from his own grapes and sold this wine to the public. The relevant local authority served an enforcement notice alleging that the sale of wine and visits by the public was a material change of use. The Secretary of State initially determined that the processing and bottling was an industrial process and so the sale of the wine produced by that process was not ancillary to agriculture. He granted planning permission for the making of wine, but upheld the enforcement notice in respect of sales and visits by members of the public.

The matter was considered by the Court of Appeal who held that the Secretary of State had erred in law. Lord Justice Schiemann stated that the proper approach to the question was to consider whether what the farmer was doing could, having regard to ordinary and reasonable practice:

- be regarded as ordinarily incidental to the growing of grapes for wine;
- be included in the general term agriculture;
- be regarded as ancillary to normal farming activities;

- be regarded as reasonably necessary to make the product marketable or disposable to profit; or
- be said to have come to the stage where the operations cannot reasonably be consequential on the agricultural operations of producing the crop.

The case was therefore remitted to the Secretary of State. Lord Justice Schiemann expressed his view (obiter) that the making of wine or cider or apple juice on the scale that instance was perfectly normal for a farmer growing grapes or apples, but ultimately it was a matter for the Secretary of State.

The Millington judgement has been applied in planning approvals at Rathfinny Wine Estate located in Alfriston in the South Downs National Park (refs. SDNP/12/01038/FUL / SDNP/15/05656/FUL). Whereby the winery was considered an agricultural building and planning permission was granted for a 1,800m² contemporary winery building and two further winery buildings totalling over 5,000m². The Estate masterplan included an Estate Office, the refurbishment of derelict barns to provide accommodation for workers and a bed & breakfast for guests, the refurbishment and extension of an agricultural workers dwelling and a new access road. The Estate also includes tours and tastings; and two restaurants open to the public for lunch and dinner, Wednesday to Saturday, Sunday lunches and breakfast for overnight guests.

A similar example of a planning application for a large-scale agricultural process is AC Goatham & Son fruit producers located in Medway, within the countryside within the Deangate Ridge (Area of Landscape Importance) (MC/08/1121). In this instance a fruit processing and storage facility was approved for a 5285m² building with a total capacity of 10,000 bins with a total of 32 full time and 86 part-time employees. The relevant local planning authority considered the scale and use to be an agricultural building utilising the Millington judgement.

Similarly, in an appeal at Land South of Bush Road (APP/A2280/W/22/3307648) an Inspector considered that wine making and that process was “*essential to viticulture, an agricultural use.*” (Although the appeal there was dismissed for other reasons).

Another Inspector applied the Millington judgement in an appeal against an enforcement notice served by Bromsgrove District Council for a certificate of lawful use or development as mixed B1, B2 and B8 use (APP/P1805/X/10/2120453). The appeal was upheld, following a public inquiry, on grounds of the use not falling within Class B2 of the Use Class Order. However, the Inspector considered “as a matter of fact and degree, the main activity on this site was the keeping of livestock for the purposes of the production of bull semen, and that activity falls within the definition of “agriculture” in s336 of the 1990 Act. Other activities including the processing of semen in the laboratory and the sale and transporting of the semen were all secondary and ancillary to that main purpose, and did not represent separate uses in their own right”. Albeit the Inspector dealt with a different part of the agricultural definition, the growing of fruit (grapes) is agriculture and therefore the processing, sale and transporting of the produce (wine) is secondary and ancillary to the main purpose of the holding which is the growing and cultivation of the grapes.

In this case, the submitted statement explains that the agricultural holding is newly formed, with the applicant having purchased the holding specifically for the purpose of a new viticulture enterprise. To assist the applicant with this new enterprise, the applicant commissioned Dr Nesbitt at Vinescapes Ltd to provide operational, strategic and research expertise to create an exceptional winery. Vinescapes Ltd produced a Winery Scoping Report (which is attached to the planning statement), that confirms that the holding will produce approx. 60,000 bottles of premium quality traditional method sparkling and still wines by 2027 per annum. Smaller yields are initially expected, but these would rise over a period time to reach this figure. With around 9 hectares of the land (out of a total of 11.5ha (approx.)) to be in viticulture use producing 61 tonnes of fruit per annum. This necessitates an estimated requirement for about 900m² of floorspace for the main purpose of grape receipt, processing and storage.

In this case the applicant has confirmed that the winery would only process the grapes grown within their agricultural holding. The Local Planning Authority consider that turning such grapes into wine is ordinarily incidental to the growing of those grapes for wine and so is ancillary to the normal farming activity of grape growing, and does therefore fall within the general term agriculture. Moreover, the Local Planning Authority consider that it can be regarded as reasonably necessary to make the product marketable or disposable to profit. Given the proposed scale, the Local Planning Authority do not consider that the operations would be at a level which cannot be considered consequential on the agricultural operations of crop production. The operation is reasonably necessary for the purposes of agriculture within the agricultural unit.

(iii) Are the building operations “reasonably necessary” for the purposes of agriculture;

Turning to the building operations proposed, as the proposed agricultural operations include wine making, there needs to be a winery. Here, the proposed winery would serve a total landholding of 11.5 Ha (approx.), of which all but the proposed building and tree screening buffers are planted with vines. It is considered that the scale of the proposed building is appropriate for the requirements of the agricultural enterprise and justified within the supporting Planning Statement (ref. 0431) and the Vinescapes Operational Addendum. The building is to be used solely in connection with the agricultural use and only produce up to 60,000 bottles per year from grapes on the landholding, as set out in the supporting Planning Statement (ref. 0431) and is considered to be incidental and will be reasonably necessary for the purposes of agriculture.

An appeal against a refusal of planning permission for the “construction of a winery building including café/restaurant and visitor centre with energy centre, car park, access road and landscaping”, was dismissed by the Inspector following a public inquiry (APP/A2280/W/22/3307648). The appeal was dismissed on impact on the landscape, amenity (both through ancillary year-round uses) and the setting of the Conservation Area, and that these impacts were not outweighed in the planning balance by the good design or economic benefits of the development. Notwithstanding the decision, the Inspector applied the Millington judgement to the winery, considering the crushing, processing, storage and bottling of wine, within the 15,912m² building, as processes “essential to viticulture, an agricultural use” and considered the visitor centre, café and restaurant to be ancillary to the 485 Ha holding (of which 364Ha to be planted vines). This prior approval application only seeks approval for a 1,100m² winery building with no ancillary uses and would, based on the Millington judgement as applied by the Inspector, be an appropriate scale for an agricultural use.

Summary

The proposed barn will provide a suitable building to meet the needs of modern agriculture. The following reasons have been provided in the planning statement:

- The building will facilitate the expansion and improvement of agricultural activities on the site;
- The cellar area will be used for temperature stable area, which will reduce energy consumption and costs

The barn would be used for the following uses:

- Receival of grapes
- Winery tanks
- Ageing cellar
- Barrell cellar
- Bottling
- Production (post bottling)
- Riddling
- Storing of pallets ready for distribution

- Storing of dry goods
- Office/Lab appropriate

Having reviewed the evidence provided by the applicant, and analysed details of the agricultural unit and development for which prior approval is sought, the Local Planning Authority consider that the scale of the building (approx. 1,100m²) is appropriate to process approx. 61 tonnes of grapes from the vines on the holding, to produce up-to 60,000 bottles of wine. This falls within the scale of an agricultural use, as demonstrated by the applicant and in appeals and planning decisions set out above, through the application of the Millington judgement.

Therefore, the development is reasonably necessary, and the proposal falls within the scope of permitted development.

Development not permitted

The Local Planning Authority have assessed whether the proposed development is prohibited by paragraph A.1 and concluded it is not. For the sake of a full analysis:

A.1 Development is not permitted by Class A if—

	Officer Analysis
(a) the development would be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare in area	The site is over 1ha.
(b) it would consist of the erection or extension of any agricultural building on an established agricultural unit (as defined in paragraph X of Part 3 of this Schedule) where development under Class Q or S of Part 3 (changes of use) of this Schedule has been carried out within a period of 10 years ending with the date on which development under Class A(a) begins	There is no planning history on the site relevant to (b).
c) it would consist of, or include, the erection, extension or alteration of a dwelling	The proposal does not involve a dwelling.
(d) it would involve the provision of a building, structure or works not designed for agricultural purposes	The building is for agricultural purposes as set out above. It is designed for the cultivation of the crop, and subsequent crushing, processing, storage and bottling of wine which is properly considered part of or incidental to the agricultural process.
(e) the ground area which would be covered by;	
(i) any works or structure (other than a fence) for accommodating livestock or any plant or machinery arising from engineering operations would exceed 1,000 square metres; or	(i) No
(ii) any building erected or extended or altered by virtue of Class A would exceed 1,500 square metres	(ii) The ground area will be under 1,000m ²

calculated as described in paragraph D.1(2)(a) of this Part	
(f) the height of any part of any building, structure or works within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres	The site is not within 3km of an aerodrome.
(g) the height of any part of any building, structure or works not within 3 kilometres of the perimeter of an aerodrome would exceed 12 metres	N/A
(h) any part of the development would be within 25 metres of a metalled part of a trunk road or classified road	No - the development is over 25m away from the highway (Gold Street).
(i) it would consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure or excavation is, or would be, within 400 metres of the curtilage of a protected building	The proposed building would not to be used for livestock or slurry storage.
(j) it would involve excavations or engineering operations on or over article 2(4) land which are connected with fish farming	The buildings will not be used for fish farming, and is not within article 2(4) land.
(k) any building for storing fuel for or waste from a biomass boiler or an anaerobic digestion system— (i) would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit; or (ii) is or would be within 400 metres of the curtilage of a protected building.	The building is not to be used in relation to a biomass boiler or anaerobic digestion system.
(l) the erection or extension of a building would be carried out on land or a building that is, or is within the curtilage of, a scheduled monument	The proposed building would not be on land, or within the curtilage of a scheduled monument.

Conditions

The Local Planning Authority have also analysed the proposed development against the conditions set out in paragraph A.2.

A.2— (1) Development is permitted by Class A subject to the following conditions—

(a) where development is carried out within 400 metres of the curtilage of a protected building, any building, structure, excavation or works resulting from the development are not used for the	The building is not proposed for these uses
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accommodation of livestock except in the circumstances described in paragraph D.1(3) of this Part or for the storage of slurry or sewage sludge, for housing a biomass boiler or an anaerobic digestion system, for storage of fuel or waste from that boiler or system, or for housing a hydro-turbine	
(b) where the development involves— (i) the extraction of any mineral from the land (including removal from any disused railway embankment); or (ii) the removal of any mineral from a mineral-working deposit, the mineral is not moved off the unit	The building is not to be used for these uses
(c) waste materials are not brought on to the land from elsewhere for deposit except for use in works described in Class A(a) or in the provision of a hard surface and any materials so brought are incorporated forthwith into the building or works in question	No waste is proposed to be brought onto the site

A.2 - (2) Subject to sub-paragraph (3), development consisting of—

- (a) the erection, extension or alteration of a building;
(b) the formation or alteration of a private way;
(c) the carrying out of excavations or the deposit of waste material (where the relevant area, as defined in paragraph D.1(4) of this Part, exceeds 0.5 hectares); or
(d) the placing or assembly of a tank in any waters,
is permitted by Class A subject to the following conditions—

(i) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank, as the case may be;
(ii) the application must be accompanied by a written description of the proposed development and of the materials to be used and a plan indicating the site together with any fee required to be paid;
(iii) the development must not begin before the occurrence of one of the following— (aa) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required; (bb) where the local planning authority give the applicant notice within 28 days following the date of receiving the applicant's application of their determination that such prior approval is required, the giving of such approval; or (cc) the expiry of 28 days following the date on which the application under sub-paragraph (2)(ii) was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of their determination;
(iv) where the local planning authority give the applicant notice that such prior approval is required, the applicant must—

(aa) display a site notice by site display on or near the land on which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the local planning authority gave the notice to the applicant; and

(bb) where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in sub-paragraph (iv)(aa) has elapsed, the applicant is treated as having complied with the requirements of that sub-paragraph if the applicant has taken reasonable steps for protection of the notice and, if need be, its replacement;

(v) the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out—

(aa) where prior approval is required, in accordance with the details approved;

(bb) where prior approval is not required, in accordance with the details submitted with the application; and

(vi) the development must be carried out—

(aa) where approval has been given by the local planning authority, within a period of 5 years from the date on which approval was given;

(bb) in any other case, within a period of 5 years from the date on which the local planning authority were given the information referred to in paragraph (d)(ii).

The applicant has provided the relevant information for the above points relating to A.2 (2). The question of prior approval (A.2(2)(d)(i)) is discussed below.

A.2 - (3) The conditions in sub-paragraph (2) do not apply to the extension or alteration of a building if the building is not on article 2(4) land except in the case of a significant extension or a significant alteration.

The development is for the erection of a building, not an extension or alteration.

A.2 - (4) Development consisting of the significant extension or the significant alteration of a building may only be carried out once by virtue of Class A(a).

The development is for the erection of a building, not an extension or alteration.

A.2 - (5) Where development consists of works for the erection, significant extension or significant alteration of a building and—

- (a) the use of the building or extension for the purposes of agriculture within the unit permanently ceases within 10 years from the date on which the development was substantially completed; and
- (b) planning permission has not been granted on an application, or has not been deemed to be granted under Part 3 of the Act, for development for purposes other than agriculture, within 3 years from the date on which the use of the building or extension for the purposes of agriculture within the unit permanently ceased, then, unless the local planning authority have otherwise agreed in writing, the building or, in the case of development consisting of an extension, the extension, must be removed from the land and the land must, so far as is practicable, be restored to its condition before the development

took place, or to such condition as may have been agreed in writing between the local planning authority and the developer.

This is a condition of Schedule 2, Part 6, Class A.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Therefore, the applicant must comply with it if relying on permitted development rights.

A.2 - (6) Where an appeal has been made, under the Act, in relation to an application for development described in sub-paragraph (5)(b), within the period described in that paragraph, that period is extended until the appeal is finally determined or withdrawn.

Para A.2 (6) is not relevant at this stage of the planning process as it depends on circumstances which occur after the permitted use has both started and then permanently ceased.

A.2 - (7) Where development is permitted by Class A(a), within 7 days of the date on which the development is substantially completed, the developer must notify the local planning authority in writing of that fact.

This is a condition of Schedule 2, Part 6, Class A.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Therefore, the applicant must comply with it if relying on permitted development rights.

Siting, Design and External Appearance

Paragraph A.2 (2)(d) (i) requires that before beginning the development, the developer must apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank, as the case may be. As the proposal only seeks prior approval in relation to the building, and not any private way or tank, the consideration below is limited to consideration of the proposed building.

The application site is located in the Green Belt, the Kent Downs National Landscape and the Istead Arable Farmlands Landscape Character Area (as identified in the Gravesham Landscape Character Assessment (2009)), and thus can be considered to be in a very sensitive location. Gravesham Local Plan Core Strategy Policy CS02, supports development outside of the urban area and settlements inset from the Green Belt within the rural area, where proposals maintain and diversify the rural economy, and are supported by national policies for protecting the Green Belt and wider policies in the adopted Development Plan. However, as this application is for seeking Prior Approval under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 6, and not a full planning application, the statutory requirements to have regard to the development plan generally (in s. 70(2) TCPA 1990) do not apply. The Local Planning Authority have considered development plan and national planning policy considerations insofar as they relate to siting, design and external appearance.

The Gravesham Landscape Character Assessment (2009) describes the key characteristics of the Istead Arable Farmland as including gently undulating topography of open arable farmland, minor clumps of native woodland and clusters of properties and farmsteads. The condition of the landscape is highlighted as poor with moderate sensitivity and it recommends restoring traditional field structures that are enclosed by native hedgerows and planting, as well as to remove detracting features from the landscape (such as electricity pylons).

In assessing the proposal, Policy CS12 (Green Infrastructure) of Gravesham's Local Plan Core Strategy (LPCS) (2014) seeks to protect the green infrastructure within the Borough and states at 5.7.26 the overall

landscape character and valued landscapes will be conserved, restored and enhanced. The greatest weight will be given to the conservation and enhancement of the landscape and natural beauty of the Kent Downs National Landscape (formerly Area of Outstanding Natural Beauty) and its setting. Policy CS19 (Development and Design Principles) (LPCS) states that new development will be visually attractive and locally distinctive. It should also conserve and enhance the character of the local built and natural environment and integrate well with the surrounding area.

At a national policy level, Sections 12 and 15 of the National Planning Policy Framework (NPPF) (2024) state that new development should be of high-quality design and contribute positively to making places better, and seek to protect and enhance valued landscapes, and also recognise the intrinsic character and beauty of the countryside.

The Local Planning Authority will now assess the requirement of prior approval for the siting, design and external appearance of the building. Siting, Design, and External appearance can have an impact on (i) landscape and visual impact, (ii) neighbour amenity [etc] and (iii) ecology, so this report will consider these aspects in turn.

It should be noted that the applicant and other parties have produced assessments of the landscape and visual effects which reach differing conclusions, these have been considered as part of the decision-making process.

(i) Landscape and Visual Impact

The proposal would introduce a substantial new building onto currently undeveloped open land in a rural location in the Kent Downs National Landscape. The undeveloped, open landscape is wholly characteristic of the local landscape area within which it lies, comprising gently rolling open countryside. The proposed building would have a maximum ridge height of 9.3m (8.6m measured from highest land level adjacent to building), an eave height of 5.115m, an overall width of 40.481m and a depth of 15.71m. It would be positioned in the western side of the field, near to the residential development and cluster of properties on Gold St, approx. 53m from public right of way (PROW) (NS190).

It should be noted that the Local Planning Authority have no objections to the general design of the building in its own right, which has the appearance of an agricultural barn. The proposed materials are black timber weatherboard cladding on the walls and black profile metal roof, which are appropriate for the rural context. The dark colour would serve to blend and screen the building against the backdrop of existing trees behind. The Local Planning Authority's consideration of the design of the building is supported by the Kent Down National Landscape Unit, who concluded that:

“while large, the scale and form of the proposed structure is agricultural in nature, and the use of black vertical timber cladding on the walls and black metal sheeting roof are considered appropriate materials in this location with the dark tone helping to assimilate the building into the landscape in longer distance views, particularly from the south, given the treed backdrop. Such materials would also reflect the use of barn tar on traditional agricultural buildings in the Kent Downs.”



Key

- Proposed Building (approx. location)
- Residential Dwellings (approx. locations)
- Public Right of Way



Google Maps Satellite 2024

<https://www.google.com/maps/@51.3838378,0.3859002,488m/data=!3m1!1e3?entry=ttu>

As demonstrated in the annotated image above (to be used for indicative purposes only, showing the approximate location of the barn), the building would be approx. 53m from the PROW. The building, from the PROW, would be viewed against the backdrop of existing trees and the plans show some planting is proposed around the building, which would screen direct views. Furthermore, the orientation in relation to the highway and rectangular shape of the building mean that it would only experience glancing views when travelling along Gold Street.

The photographs below were taken on 22 July 2024, from various points around the road and field (as highlighted by the yellow circles on the annotated satellite image above):





These photographs serve to highlight that the location of the building, close to the backdrop of trees, is a substantial distance from the nearest public vantage points on the PROW and that there would be limited views from the highway. It is not argued that the building would blend into the landscape and acknowledged it would be visible from certain vantage points, however the applicant proposes soft landscaping screening and the barns location in north-west of the field is not considered to have a detrimental impact on the landscape, by virtue of the backdrop and existing cluster of development.

A number of Landscape Visual Impact Assessments (LVIAs) have been submitted, both in support and objection to the proposal.

The initial Landscape Statement by LHLA was commissioned by local residents and submitted in objection to the proposal. The report assesses the impact on the building on the landscaping, concluding that the proposal should be refused based on the following summary:

- Landscape Effects – Moderately adverse
- Visual Effects – Majorly adverse
- Mitigation – Inadequate

The statement assesses views from four locations around the landscape, at varied distances from 1.25km to 200m from the proposed building, with the findings summarising varied impacts in terms of visibility. This

assessment is similar to the photographic evidence of the field undertaken by Local Planning Authority above, where it is acknowledged that the building would be visible.

A rebuttal Landscape Visual Impact Assessment (LVIA) by TerraFirma has been submitted by the applicant, in response to the statement produced by LHLA. The Kent Downs NL Management Unit are in general agreement with the majority of the LVIA by TerraFirma, but highlighted some areas were over/underplayed within the assessment although this did not cause reasons for an objection.

The LVIA concludes that the development would result in a low adverse magnitude of effect and an overall moderate adverse landscape effect, by reflecting the patterns of isolated farms and hamlets connected by narrow country lanes within the Luddesdown local character area as defined in the Kent Downs AONB Landscape Character Assessment Update (2023). Furthermore, the LVIA considers the design, location and mitigation planting to reduce the visual impact of the development from public vantage points. This assertion from the LVIA is echoed by the Kent Downs NL Management Unit, who concluded that location and proposed siting of the building adjacent to the existing built form on Gold Street is considered to be *“the most appropriate location for new built form within the available landholding”*, and as referenced above noted that the design is appropriate for the North Kent landscape.

A further Landscape and Visual Review has been prepared by Lawrance Associates, on behalf of neighbours to the land holding. This report concludes that, *“it is considered that the proposed scale, elevated location within the field, and the required mitigation planting would give rise to some significant landscape and visual effects, which are contrary to the many sources of guidance for this landscape character area and within the Kent Downs National Landscape and compromise the openness of the Green Belt. This is contrary to Policy CS12 green Infrastructure where the “greatest weight will be given to the conservation and enhancement of the landscape and natural beauty of the Kent Downs Area of Outstanding Natural Beauty and its setting.” The proposed development is also considered to be contrary to the landscape-led approach advocated in the Kent Downs National Landscape Management Plan, i.e., “understanding of the site and its setting, the local landscape character, supporting this it is the landscape elements, context, special character and qualities, distinctiveness, sense of place, patterns and sensitivities; how it is perceived by people and for what reasons it is valued by people are key to the approach.”*

Landscape Visual Impact Assessments generally are undertaken as part of EIA requirements, outside these requirements they are undertaken to consider proposals that are being brought forward in terms of their change in relation to landscape and visual amenity. As such they are intended to appraise proposals where concerns about the proposals effects on the landscape and/or visual amenity. The Landscape Institute recognises that landscape value can relate to natural heritage, cultural heritage, landscape conditions and associations. The broad definition of landscapes published by Natural England as set out in the European Landscape Convention (the ELC), *“landscape means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors.”*

The ELC, sets out that Landscape is an essential part of a sustainable future and includes:

- **Social:** Landscape is essential to place making; community cohesion; quality of life; and health and well-being.
- **Economic:** Landscape provides the backdrop to economic activity including recreation and tourism. It is an economic asset and driver of the economy in its own right attracting inward investment and stimulating economic growth;
- **Environment:** How landscape is managed fundamentally affects the conservation and enhancement of biodiversity; cultural heritage; and natural resource protection.

Natural England's guidance on ELC, also recognises that landscape has changed in the past and will change in the future. The guidance states that landscape is a dynamic, complex system that has changed through history in response to physical processes and human interventions, with the English landscape having undergone change both physically and in terms of how it is perceived. It is considered that future landscape changes are likely to be accelerated further driven by Climate Change, Natural Processes, Technological Advancement, Economic and Market Trends, Social and Cultural Trends, Changing Values and Policy and Regulatory Responses.

This is considered in the Kent Downs National Landscape's Management Plan Vision, which states, *"In 2031 ... the principles and goals of sustainable development are at the heart of the management of the Kent Downs. Change reinforces and enhances the characteristics, qualities and distinctiveness of the Kent Downs and benefits its communities and economy. While the surrounding urban areas have expanded considerably, innovative management techniques and policy approaches successfully address the pressure and opportunities presented by growth to the landscapes of the AONB. Through landscape scale restoration, conservation and enhancement the Kent Downs has a key role in mitigating and balancing any negative environmental impacts of the significant growth that Kent has (and continues to) experience. The impacts of climate change are being felt but the mitigation and adaptive responses taken are landscape led, effective and carefully chosen to enhance the characteristics, qualities and distinctiveness of the landscape rather than detracting from them. The natural capital and ecosystems service provision of the Kent Downs has been enhanced. Important areas of tranquillity have been identified, protected and expanded and provide 'oases of calm'. The Kent Downs landscape and partnership take an important and appropriate role in the economic and societal recovery from Covid-19."*

In 2021, 64% of the Kent Downs National Landscape's land was classed as agricultural with the Management Plan recognising the growth of viticulture within the National Landscape and both the opportunities and threats that this raised. In particular the Management Plan recognises that development pressures associated with viticulture e.g. wineries, visitor centres and provision for workers can result in landscape detractors.

This part of the Kent Downs National Landscape is characterised by historic farmsteads, routeways and field boundaries set in a mosaic of irregular fields interspersed by woodlands and hedges. With residential properties to the north, and the settlement of Sole Street to the north west/west of the proposal, where development along this part of Gold Street is sporadic and comprises of occasional dwellings surrounded by agricultural fields. Given the low density of built form in the immediate area, the character of the street scene is dictated by the field parcels, hedges and trees which ensure that the natural and scenic beauty of the AONB predominates. This provides the area with a notably peaceful, remote and tranquil quality.

An agricultural building would not be uncharacteristic of the rural landscape or the Kent Downs National Landscape. Furthermore, within the Green Belt land use designation, new buildings for agricultural use are not inappropriate development (paragraph 154 of the National Planning Policy Framework (2024)). Therefore, although the proposal would introduce built form to the landscape, this is not uncharacteristic and suitably designed to minimise siting impacts through black cladding to limit the impact of external appearance, as agreed by Kent Downs NL Management Unit.

As part of the development, the applicant has proposed mitigation planting is to the north, on the south-western and south-eastern corners of the building, as well as along the western boundary of the landholding. This is considered to serve as screening to break up the sharp edges and façade of the development, blending it into the landscape and reducing the overall impact and is supported by the Kent Downs NL Management Unit.

It is noted by the Local Planning Authority that the prior approval can only be required for the siting, design and external appearance of the building and that the planting does not inherently relate to the building itself,

however the planting is proposed by the applicant and would improve its siting and appearance within the landscape. As the planting is set out within the supporting plans, it would be required to be carried out in accordance with those details as confirmed in A.2(2)(v) of Part 6, Schedule 2 of the GPDO.

However, the Local Planning Authority acknowledge, as noted in the LHLA objection and by the Kent Downs NL Management Unit, that the details of the proposed planting and soft landscaping are lacking in the submission, with no information relating to species, size, density or management provided. In order to comply with national legislation, as well local and national planning policy requirements for biodiversity, these would be expected to be native species and to promote biodiversity opportunities, and such additional details would normally be conditioned as part of a full planning application. Due to the planting being proposed by the applicant and therefore forming part of the siting within the landscape, and would assist in blending the development into the landscape and serving to further mitigate the siting, design and external appearance impact of the building, the submission of a comprehensive landscape plan is a requirement of prior approval. As stated previously, any landscaping approved in a follow-up details application will be required to be implemented and carried out in accordance with those details as confirmed in A.2 (2)(v) of Part 6, Schedule 2 of the GPDO.

The siting, design and external appearance of the proposed development could have the potential to impact the landscape through artificial lighting. The plans show that there are 12no. Velux windows on the north and south roof slopes and one ground floor level window on the north elevation. The lighting design strategy concludes that the proposed development and lighting schedule would be at a level of 0.5 lux to a distance of 15m from the building, and compares the light spill to be equivalent to the illumination of a full moon. This report has been reviewed by GBC Environmental Protection, who consider that the lighting design is in accordance with levels required in the ILP guidance for an E1 Environmental Zone, and should not result in impacts on the wider landscape. The Kent Downs NL Management Unit noted that the site is currently unlit and the development could impact the dark night skies of the Kent Downs National Landscape, but noted that the recommendations within the Lighting Report by Alan Tulla Lighting were acceptable. These include automatic blackout blinds for windows and external movement sensor lighting. Therefore, the siting of the proposed building, subject to adhering to the recommendations of the supporting Lighting Report, would not have a significant impact on the Kent Downs National Landscape, and would conserve and enhance the natural beauty of the area of outstanding natural beauty.

Whilst the site contributes to the rural character of the surrounding area, it is also viewed in the context of the development within Gold Street, and the Sole Street settlement beyond. Given its position in relation to existing built structures, it would appear as part of this more developed section of the National Landscape, thus its contribution to the open character of the Kent Downs National Landscape would be limited. The proposal is considered to assimilate appropriately within the wider setting and conserve the landscape and natural scenic beauty, visual qualities and essential characteristics of the Kent Downs National Landscape, and the character and appearance of the surrounding countryside.

Overall, the proposed barn is considered to be well designed, in an appropriate location within the landholding and includes mitigation to limit impacts on the Kent Downs National Landscape. Therefore, from a landscape perspective the siting, design and external appearance of the agricultural building is acceptable in accordance with Policies CS12 and CS19 (LPCS), as well as Sections 12 and 15 of the NPPF (2024).

(ii) Neighbour Amenity



Google Maps Satellite 2024

<https://www.google.com/maps/@51.3838378,0.3859002,488m/data=!3m1!1e3?entry=ttu>

The annotated image shows the position of nearby residential properties in relation to the approximate position of the proposed building. Although there is no stated case that resolves the consideration of residential amenity in a Class A of Part 6 context, in this instance the proximity of the development to sensitive residential receptors would mean amenity is inherent in the siting assessment and it could be said that the *Coventry Gliding Club Ltd, R v Harborough District Council & Anor* [2019] EWHC 3059 case is analogous. Therefore, the amenity of neighbouring residents has been assessed, and the proposed development is not considered to impact amenity through outlook, noise or light, as set out below:

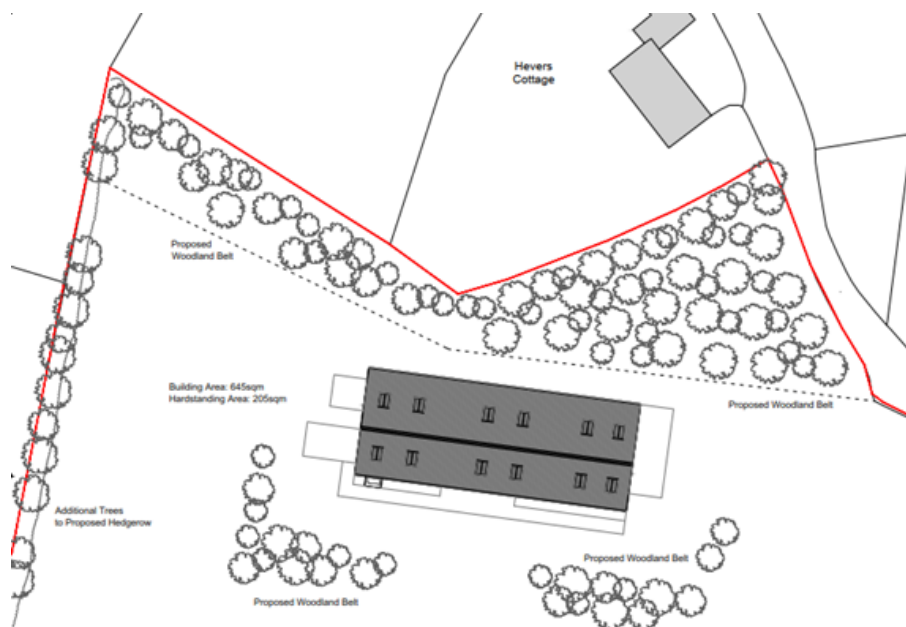
Impact on Outlook and View

The nearest property (Hevers Cottage) is located approx. 50m to the north of the proposed building, and the orientation of this property with windows facing north-east and south-west means that the proposed building would not have any significant impacts in terms of outlook. Similarly, the other property on the southern side of Gold St (Mulberry House) is approx. 70m from the building, is orientated east-west and the building would have limited impact on outlook from windows facing east.

The Landscape Statement by LHILA, submitted as an objection, as well as a number of neighbour representations, highlight the loss of outlook and view as concerns. The relevance of views and outlook were considered by an Inspector in the Burnthouse Farm windfarm inquiry (APP/D0515/A/10/2123739), where the Inspector stated “*no individual has the right to a particular view but there comes a point when, by virtue of the proximity, size and scale of a given development, a residential property would be rendered so unattractive a place to live that planning permission should be refused. The test of what would be unacceptably unattractive should be an objective test*”. Based on this statement, there is no right to a view within planning law and this is therefore not a material consideration. However, the impact on outlook can be material and should be objectively considered in this case.

Although the proposed building is large, it is not considered to have significant impacts on outlook by virtue of the separation distance and proposed planting. The distances of the proposed development to the

nearest residential dwellings are approx. 50m and 70m respectively and the set back from their rear boundaries by approx. 13m and 18m respectively. The proposed planting, which would be secured through additional details, would screen the building from direct view and create a buffer to limit visibility or outlook impacts. Therefore, the development is not considered to render the properties unattractive places to live through loss of outlook.



Overall, the separation distances between the proposed building and nearest residential properties is considered to be adequate to minimise loss of outlook and any negligible impact is further reduced by the orientation of the residences in relation to the building and planting. Therefore, the proposal is considered to safeguard amenity in relation to outlook.

Noise and Light

In terms of the siting near to residential properties, the potential for noise and light disturbance are material considerations. The application has been supported by a noise impact assessment and a lighting design strategy, which have been reviewed by Gravesham's Environmental Protection Team (EP). EP officers are satisfied that the conclusions of the noise impact assessment are calculated to be below existing background noise levels and would not have adverse impacts in terms of noise. The building has been designed with the majority of openings facing southward, away from the nearby residential properties, which would also serve to reduce noise spill toward the sensitive receptors. Furthermore, the proposed woodland belt planting between the barn and residential dwellings would serve to screen and mitigate impacts.

An acoustic report was submitted by Lustre Consulting, commissioned by neighbouring residents, in response to the noise impact assessment. The report concluded that the building is located in the "worst possible location" directly adjacent to residential properties, and questions the accuracy of Chris Wood Acoustics' noise assessment. Following the receipt of the Lustre Consulting report, EP officers have reviewed both reports and found that both a satisfactory in terms of methodologies followed, albeit with different outcomes, stating that this is mainly due to differing resultant background noise levels and the approach taken to anticipated noise levels from within the building. Based on the different outcomes, EP have highlighted that 'normally' in a planning application a post completion noise assessment condition would be recommended, however this is not possible in the context of this application type.

Following the submission of the Lustre Consulting acoustic report, a noise impact assessment addendum was produced by Chris Wood Acoustics. The addendum concludes that the resultant sound levels would fall below background conditions, be below ambient conditions for external amenity area and that there would be no adverse noise impact on neighbouring properties. These conclusions were again disputed in a follow-up objection from Lustre Consulting.

Gravesham EP have reviewed the rebuttal noise addendum by Chris Wood Acoustics and the follow-up objection from Lustre Consulting, stating that there is nothing to add from their previous comments (July 2024). EP officers reaffirmed that in a full planning application a condition would be sought for a post-completion noise impact assessment. It is considered appropriate, given that Vinescapes manage other vineyards and wineries, that a follow-up BS4142:2014 assessment is to be submitted using noise measurements taken from a similarly sized and set up (i.e. similar equipment) winery bottling plant to provide a more accurate outcome. Therefore, prior approval is required for this matter.

The intensity of the use of the building was raised as a concern in other objections received. As siting is something for which prior approval can be required, and due to the proposed siting of the building near to residential receptors, the operating hours, vehicle movements and the bottling operation are relevant considerations. The application has been supported by an operational addendum by Vinescapes which sets out how the winery would operate, providing employee numbers, expected working hours, bottling hours and expected vehicle movements. These are summarised as follows:

Employees

- 2no. full time workers
- 3no. part-time workers
- Seasonal workers during harvest (likely a 1-2-week period from September to October)

Operating Hours

- Normal working hours for most of the year
- Potential for 12hr days for a 1-2week period in September/October during harvest

Bottling/Production

- 20hrs of bottling per annum or less (producing 3,000 bottles per hour)

The expected daily vehicle movements were set out in the 'Rebuttal Statement - Highways and Transport' produced by GTA Civils and Transport, which using Vinescapes supporting documentation estimates a total of 18 daily trips (two way), albeit this is only at maximum operational levels such as during the harvest period.

Based on the evidence provided and the scale of the operation proposed, the disturbance from use is not expected to have any detrimental impact on the amenity of the nearby residential occupiers.

In terms of lighting, the proximity of the building to residential uses could have impacts on amenity. The application has been supported by a lighting design strategy, which as aforementioned, concludes that the development compares the light spill to be equivalent to the illumination of a full moon. This report has been reviewed by Gravesham EP, who consider that the lighting design is in accordance with levels required in the ILP guidance for an E1 Environmental Zone and should not result in nuisance for nearby residences.

Therefore, based on the above, the Local Authority considers that the siting and design of the building should be subject to prior approval, to allow greater consideration of the noise impacts. The prior approval should be supported by a BS4142:2014 assessment follow-up using measurements taken from a similar vineyard and bottling plant.

(iii) Ecology

The Natural Environment and Rural Communities Act (NERC Act) received Royal Assent on March 30 2006. Amongst other measures, it created a 'Biodiversity Duty' to ensure due regard to the conservation of biodiversity, as was set out in the Countryside and Rights of Way (CROW) Act (2000), to public bodies and statutory undertakers. Section 41 of the NERC Act refers to a [published list of habitats and species](#) which are of principal importance for the conservation of biodiversity in England.

In the exercise of their functions Local Planning Authorities (LPAs) are also required to have regard to the requirements of Regulation 9 of The Conservation of Habitats and Species Regulations 2010 (as amended) (Habitats Regulations) which states that that public bodies must exercise their nature conservation functions so as to comply with the Habitats Directive. Regulations 41 and 45 of the Regulations afford legal protection to European protected species.

This is supported by the Department for Communities and Local Government report (March 2014), on responses to the consultation on changes to Permitted Development rights, which in paragraph 25 indicates that "all changes under permitted development are required to meet necessary habitats and environmental legislation and regulations".

Whilst not expressly referred to in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the above duties apply and are relevant to the consideration of this application. As ecological matters can directly influence the siting of the building, and as sufficient information has not been provided by the applicant, the Local Planning Authority will require this information to make an informed decision in relation to the siting of the building.

Therefore, based on the above, the Local Planning Authority consider that the siting of the building should be subject to prior approval, to allow for the submission of a Preliminary Ecological Appraisal (PEA). The prior approval should be supported by a comprehensive PEA of the site to ensure that it is the most suitable siting of the building in the interest of protecting ecology and notable species.

Overview of Siting, Design and External Appearance

New buildings for agricultural purposes are not inappropriate in the Green Belt (paragraph 154 (a) of the NPPF 2024) and are characteristic of the Kent Downs National Landscape. The scale of building, with an overall height of 9.3m/8.6m and eave height of 5.115m, is not excessively tall for an agricultural building in its own right and its position to the west of the field presents a more secluded and sheltered location within the landscape, with the design and materials appropriate for traditional agricultural barns in the Kent Downs National Landscape. Moreover, the position is near to the cluster of residential development on Gold St serves to limit the impact on the openness of the Kent Downs National Landscape and mitigate its prominence from views glimpsed on approach along the highway. The argument presented that the tree backdrop and vines would serve to mitigate the impact, and that the new planting would screen visibility are considered to benefit the development and screen the building from direct and longer distance views. However, the landscaping plan is not conclusive and is a reserved matter, requiring additional detail to be submitted, thus triggering the requirement of prior approval.

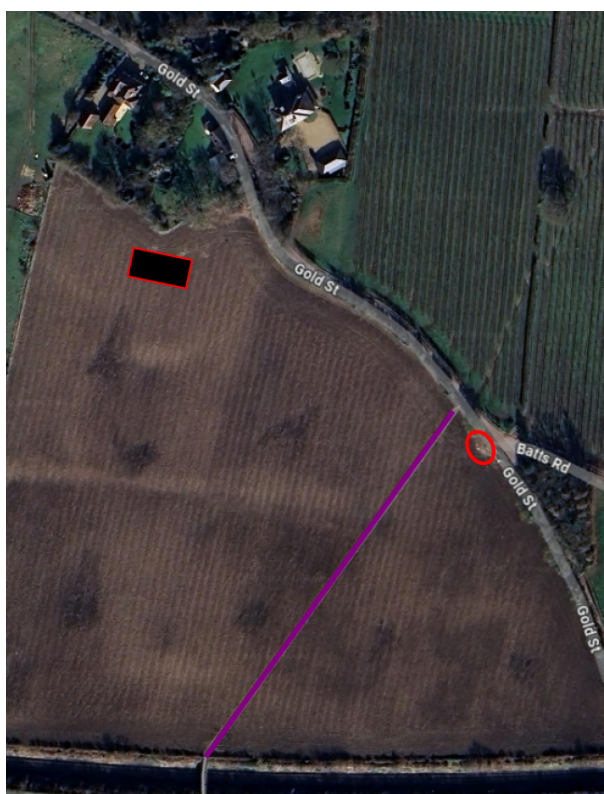
The new building, although sited near to residential properties, has been designed to limit impacts and safeguard amenity. There are limited openings on the northern side to reduce any light or noise spill towards sensitive receptors and information has been provided in relation to noise, light and mitigation through additional planting. However, it is recommended by Environmental Protection that a follow-up BS4142:2014 assessment is undertaken to confirm noise outputs from a similar scale/operation winery.

Overall, the location is considered to be appropriate in limiting the buildings visibility, aided by the existing tree line backdrop and the proposed planting. The proposed building would be near to the cluster of residential development on Gold Street, in a more sheltered and secluded part of the field and, subject to the submission of additional details, to be approved in writing by the Local Planning Authority, is not considered to adversely impact the Green Belt, Kent Downs National Landscape or residential amenity.

Construction of the Private Way

As stated previously, this application seeks consideration of the building only, and not the construction of a private way. Therefore, A.2 (2)(b)(i) of Part 6, Class A, Schedule 2 (GPDO) is not considered relevant to the matters left open for this prior approval, however had it been required, the Local Planning Authority would not have concluded that it be reasons to require prior approval based on the following considerations.

The landholding has an existing access from Gold Street (as shown in the satellite image below – circled in red) and therefore the construction of a new private way is not necessarily required as the applicant can lawfully access the land. The Local Planning Authority has noted that some excerpts within the supporting documents show a new access to the west of the public right of way (NS190), which was raised in the objection by Transport Dynamics and neighbour objections as a concern. Additional evidence relating to the new access has also been submitted in the ‘Rebuttal Statement - Highways and Transport’ produced by GTA Civils and Transport.



Google Maps Satellite 2024

<https://www.google.com/maps/@51.3838378,0.3859002,488m/data=!3m1!1e3?entry=ttu>

Kent County Council (KCC) Highways reviewed the highway rebuttal document, even though this application does not meet their protocol arrangements, and provided informal comments, concluding that if the application were for full planning permission it would not be expected to cause concern or raise objection from the highway authority. The comment from KCC highways did note that the suggested

western access would achieve acceptable visibility splays and that there appear to be adequate passing places on Gold St for larger vehicles.

A number of objection letters were submitted including by Transport Dynamics, commissioned by surrounding residents. These letters criticise the application, stating that they are inadequate submissions in relation to highway matters and that there would be significant adverse effects on highway safety and the public rights of way network. However, Class A, Part 6 of the GPDO does not require full submission of details relating to an access, and the site has an existing access and KCC highways / PROW teams were consulted and did not raise any concerns.

Notwithstanding the detail submitted relating to the new western access, the applicant, under Class B of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, has permitted development rights to carry out development for *“the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)”*. Therefore, as Gold Street is not a classified road, the applicant could utilise permitted development to form, layout and construct a means on access onto Gold Street in connection with the construction of an agricultural building if permitted under Class A, Part 6 of the GPDO.

Therefore, Class A of Part 6 of the GPDO does not require the access arrangements for the development to be submitted or considered. The existing access point could be used to serve the new building and no objection was raised by KCC Public Rights of Way to vehicles crossing the NS190 subject to suitable signage to warn pedestrians using the footpath. The applicant should liaise with KCC Public Rights of Way regarding appropriate signage.

Other Matters

Environmental Impact Assessment (EIA)

The Local Planning Authority are in receipt of objections setting out a view that the proposal is EIA development. Having considered the proposal against Schedule(s) 1 and 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571, which include the development categories that would require an EIA, the Local Planning Authority have concluded that the proposed development does not fall within the categories of either Schedule 1 or Schedule 2.

The Town & Country Planning (Environmental Impact Assessment) Regulations 2017 (Statutory Instrument 2017 No. 571) (as amended) – the EIA Regulations – form part of the development management system in England. The EIA Regulations cover certain types of development which have the potential to give rise to significant effects on the environment. The EIA Regulations enable Local Planning Authorities to take account of the environmental implications of development in their decisions on planning applications. EIA is mandatory for developments of the types listed in Schedule 1 of the EIA Regulations. For developments of the types listed in Schedule 2 of the EIA Regulations the requirement for EIA will be determined by the relevant Local Planning Authority on a case by case basis (screening), unless the developer volunteers to undertake an EIA. As the proposed development does not fall within Schedule 2 of the EIA Regulations, a formal screening opinion has not been sought by the applicant.

Conclusions and Reason for Decision

This report has assessed the proposed building against the criteria of Class A, Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, and is considered to be permitted development.

The development is considered to be reasonably necessary for the purposes of agriculture and at an appropriate scale.

The applicant has applied for a determination as to whether prior approval will be required as to the siting, design and external appearance of the building. Taking into account the significance of the Kent Downs National Landscape, the proposed development has an acceptable style of design and choice of materials in context and can be supported, however additional details are requested by the Local Planning Authority to ensure that the proposed planting, which would soften and blend the building within the landscape, is carried out with acceptable native species. Therefore, the applicant is required to submit landscaping details which include type and species (quantity, size and type), timescale, initial aftercare, extent and materials for hardstanding, and means of enclosure.

The amenity of sensitive residential receptors located near the proposed development were considered inherent in the consideration of the siting of the building, by virtue of proximity. As set out in the analysis above, although the application has been supported by noise assessments these were not considered to demonstrate the accurate noise levels of the winery. Accordingly, the Local Planning Authority considers prior approval is also required for siting. Any application should include a noise impact assessment from a comparable facility in line with BS4142:2014 to ensure no adverse impact on amenity through the buildings siting.

The siting of the building in this location may have an effect on protected species by virtue of its location and evidence provided through representations. As set out in the assessment above, Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) developments are required to meet necessary habitats and environmental legislation and regulations, and the Local Planning Authority are required to exercise nature conservation functions under the Habitats Directive. Consequently, to ensure that any protected species are afforded necessary legal protection prior approval is also required for siting in relation to ecology. Any application should include a Preliminary Ecological Appraisal to ensure no adverse impact on protected species through the buildings siting.

Therefore, prior approval is required for the development and the additional details must be submitted to and approved in writing by the Local Planning Authority. These will be set out in full within the decision notice.

To accord with A.2 (2) (iv) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, the applicant is required by legislation to display a site notice on or near the land to which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the 28 day period from the date of the decision. The notice will be supplied to the applicant along with the decision notice. If the site notice is removed, obscured or defaced before the period of 21 days have elapsed you must take reasonable steps for protection of the notice and if need be, its replacement.

Recommendation

Prior Approval is Required

Case Officer:	Mr Ethan Bonthron	Team Leader:	Mr Shazad Ghani
Signed:		Signed:	S.Ghani
Dated:	30 April 2025	Dated:	30 April 2025