Neutral Citation Number: [2024] EWHC 1272 (Admin)

Case No: AC-2023-LON-003127

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2024

Before :

Her Honour Judge Alice Robinson sitting as a Deputy High Court Judge

- -

Between :

SARAH MOAKES	**Claimant**
- and -	
CANTERBURY CITY COUNCIL	**Defendant**
- And -	
GARY WALTERS (ON BEHALF OF HICO GROUP)	**Interested Party**

- -
- -

Ben Fullbrook (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Giles Atkinson (instructed by **Canterbury City Council**) for the **Defendant**
Isabella Tarfur (instructed by **Maples Teesdale**) for the **Interested Party**

Hearing dates: 8 and 9 May 2024

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Approved Judgment

This judgment was handed down at 12pm on Friday 24 May 2024 in court and by release to the National Archives.

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Her Honour Judge Alice Robinson sitting as a Deputy High Court Judge:

Introduction

1. On 8 September 2023 the defendant (the Council) granted hybrid planning permission ("the Permission"), comprising full permission for the expansion of Canterbury Business Park to create 11,900 sqm winery with associated parking and landscaping and outline proposals with all matters reserved except access for up to 8,000 sqm of warehousing ("the Proposed Development"), at Land Southwest of Canterbury Business Park, Highland Court Farm, Coldharbour Lane, Bridge CT4 5HL ("the Site"). The decision to grant the Permission was made at a meeting of the Council's planning committee ("the Committee") on 25 July 2023. The Claimant, who is a local resident, objected to the Proposed Development and she now applies to quash the Permission on four grounds. The Interested Party ("IP") is the applicant (or one of the applicants) for planning permission.

Factual Background

2. The Site extends to some 6.70 hectares and comprises agricultural land. The Site lies approximately 6.4km to the south east of Canterbury City Centre and approximately 1.5km southeast of the village of Bridge. The north-eastern boundary of the Site is bounded by the Canterbury Business Park and directly north is a Grade II* Listed Building, Higham Park. The Site is also located within the Kent Downs Area of Outstanding Natural Beauty ("AONB"), the North Kent Downs Area of High Landscape Value and the Highland Court Conservation Area ("CA"). The Site is, therefore, said to be in a highly sensitive area in both heritage and landscape terms.

3. The Site forms part of an allocation in Policy C21 of the Council's Draft Canterbury District Local Plan to 2045 ("the Draft Local Plan"), which includes the expansion of Canterbury Business Park. A consultation on the Draft Local Plan pursuant to reg.18 of the Town and Country Planning (Local Planning) (England) Regulations 2022 concluded in January 2023. Natural England has objected to Policy C21 on the grounds of harm to the AONB. The Draft Local Plan is at a very early stage in the process towards adoption.

4. The Claimant lives close to the AONB and regularly walks and cycles close to the Site, using local trails which will be affected by the Proposed Development. The Claimant is also a member of the Campaign to Protect Rural England – Kent Branch ("CPRE Kent"). CPRE Kent objected to the Proposed Development and, on 29.09.23, sent a letter under the Pre-Action Protocol for Judicial Review ("PAP") indicating its intention to bring a judicial review of the Council's decision to grant the Permission.

5. CPRE Kent ultimately decided not to bring a claim for reasons of cost. However, the Claimant, who was aware of CPRE's PAP correspondence, has decided to bring this claim in her own capacity. As well as being a member of CPRE Kent, the Claimant submitted an objection to the Proposed Development in a personal capacity. She also issued a judicial review claim in respect of a previous decision of the Council to grant permission for the Proposed Development, which was quashed with the consent of the Council.

6. The application form for the Proposed Development described the applicant as being Mr Gary Walters of "HICO Group with Chapel Down and Defined Wine." The IP submitted a needs assessment stating that Chapel Down is England's leading and largest winemaker. In order to meet forecast growth and maintain its market-leading status within the country the company needs to consolidate its operations onto a single site with a circa 12,000sqm winery plus a 4,000sqm longer-term storage building alongside, together with future vineyards in the North Downs chalk seam area. The company has agreed with the landowner of the Canterbury Business Park that vines can be planted at Highland Court Farm. The company has also confirmed that the existing winery at Tenterden in Kent does not have the capacity to expand to meet their needs, is located poorly in terms of the wider highway network and does not have the space for ancillary storage/bottling facilities.

7. With regards to Defined Wine, they are said to be a leading specialist in the production of wine. Whilst they do not have vineyards of their own, they help winemakers produce wine, including Chapel Down. The company is already located at the Canterbury Business Park and requires expansion to meet their current and future needs. The proposed warehouse would be located adjacent to their existing warehouse and adjacent to the Chapel Down proposal, allowing benefits such as knowledge sharing and training.

8. The Proposed Development is EIA development pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations"). The application was accompanied by: (a) an Environmental Statement, (b) an Alternative Site Search and (c) a Landscape Visual Impact Assessment ("LVIA"). It was common ground that the Proposed Development comprises "major development" in the AONB and therefore engages para 177 of the National Planning Policy Framework ("NPPF") which provided as follows:

> "When considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development 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:
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> 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;
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> 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."

9. A number of objections to the Proposed Development were submitted by statutory consultees, statutory bodies, interest groups and members of the public including the Claimant.

10. Natural England ("NE") is a statutory body whose remit includes the conservation and enhancement of the landscape. It was a statutory consultee by virtue of s.6 of the

National Parks and Access to Countryside Act 1949. NE sent a letter of objection, dated 15.01.23.

11. Historic England ("HE") is a statutory body whose remit includes the preservation of historic buildings and conservation areas in England. It was a statutory consultee by virtue of reg 5A of the Planning (Listed Buildings and Conservation Areas) Regs 1990 (SI 1990/1519 as amended). HE also sent a letter of objection, dated 22.12.22.

12. The Kent Downs AONB Unit ("the AONB Unit") is part of the Joint Advisory Committee ("JAC") for the Kent Downs AONB. It is employed by Kent County Council and funded by contributions from the Department for the Environment, Food and Rural Affairs ("DEFRA") and various local authorities within the county and provides advice on the management of the AONB. The AONB Unit has an agreement with the Council to provide consultation responses on planning applications at the request of a JAC member or a local authority planning officer. The AONB Unit submitted a letter of objection dated 16.12.22.

13. Upon receipt of these objections, the IP commissioned letters in response and made some changes to reduce the scale of the Proposed Development by removing 21,250m sqm of floorspace and reducing the site are from 10.9 hectares to 6.7 hectares. The above bodies were therefore re-consulted. NE provided a further letter of objection dated 20.3.23. HE provided a further letter of objection dated 20.3.23. The AONB Unit provided further letters of objection dated 22.2.23 and 13.03.23.

14. Objections were also sent by CPRE Kent dated 21.7.23 and others. The Claimant's objection is dated 25.7.23.

15. The Council's approach to considering the objections to the Proposed Development is the subject of ground 2 of the Claimant's challenge.

16. The Council's planning officers prepared advice for the Committee on the merits of the Proposed Development in an officer's report ("OR"). The Claimant avers that this provided an incomplete summary of objections from NE, HE and the AONB Unit. The OR concluded that the

> "proposal meets the 'exceptional circumstances' test as set out in paragraph 177 of the NPPF and it would be in the public interest to permit the proposal. The applicant has demonstrated that there is a need for the development and that there are no alternative sites outside of the AONB to meet this need. The development would significantly expand the nationally important viticultural industry in Canterbury, supporting the growth of two Kent businesses including Chapel Down, England's leading and largest winemaker. The economic benefits of the scheme would be significant. I consider that the public benefits outweigh the harm to heritage assets (these having been given considerable importance and weight) and the loss of agricultural land."

17. The Council's approach to para 177 of the NPPF is the subject of ground 4 of the Claimant's challenge.

18. An addendum officer report ("Addendum OR") was subsequently provided to address requirements under the EIA Regulations and to explain that the Applicant's

methodology for considering alternative sites outside of the Canterbury District was "a reasoned, proportionate and robust approach to take". The Addendum OR drew attention to further representations that that had been received including that of CPRE Kent.

19. The Committee met to consider the application on 25.7.23. On the morning of the Committee meeting, Dr Newport for CPRE Kent emailed the Planning Officer, copying Committee members, drawing their attention to an appeal decision which had been issued the previous day near Medway, Kent ("the Medway Appeal"). The appeal decision was attached and the email noted a small number of specific paragraphs of the decision letter to which CPRE Kent particularly wished to draw attention. The Council's approach to the Medway Appeal is the subject of ground 3 of the Claimant's challenge.

20. Three groups objecting to the Proposed Development attempted to register to speak at the Committee meeting in accordance with the Council's Constitution: the AONB Unit, (Katie Miller), NE (Heather Twizell) and CPRE Kent (Dr Hilary Newport). In the event only Katie Miller spoke. The circumstances in which this came about are relevant to ground 1 of the Claimant's challenge and will be described in more detail below. In addition, three speakers spoke in support of the application, as well as the IP's agent. The Committee resolved to grant planning permission by a vote of 9:4. Formal notice of grant was issued on 8.9.23.

Legal framework

21. Subject to one matter relating to ground 1, there is no material dispute as to the correct legal approach towards dealing with the Claimant's challenge.

22. The principles applying to criticism of officers' reports are set out in Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314 at para 42 (Lindblom LJ). Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge. Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave. The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way—so that, but for the flawed advice it was given, the committee's decision would or might have been different—that the court will be able to conclude that the decision itself was rendered unlawful by that advice. Where the line is drawn between an officer's advice that is significantly or seriously misleading—misleading in a material way—and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it.

23. In cases involving applications for EIA development, there is a statutory duty to provide a statement of the reasons upon which a decision to grant planning permission is based: reg. 30 of the EIA Regulations. The standard of reasoning required is as set out in South Bucks District Council and another v Porter (No. 2) [2004] 1 W.L.R.

1953 para 36, namely, they must be intelligible and adequate, enabling one to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues". The reasons must not give rise to a substantial doubt as to whether the decision maker went wrong in law.

24. Where decision makers are dealing with objections by statutory consultees such as NE the views of such expert bodies must be given "considerable" weight and a departure from those views requires "cogent and compelling reasons", see Shadwell Estates Ltd v Breckland DC [2013] EWHC 12 (Admin) at para 72. However, as Holgate J pointed out in R (Together Against Sizewell C Ltd) v SoS for Energy Security and Net Zero [2023] EWHC 1526 (Admin), the level of reasoning which the law expects of a decision-maker disagreeing with the view of an expert body may depend upon whether that view is an unreasoned statement or assertion, or a conclusion which is supported by an explanation and/or evidence. It may also depend upon the nature of the subject-matter. Some advice may not call for reasoning and/or supporting evidence, other advice may do, para 108.

25. The principles governing public speaking at planning committee meetings have recently been summarised by the High Court (Morris J) in R (Spitalfields Historic Buildings Trust) v Tower Hamlets LBC [2023] P.T.S.R. 31 at para 138 (although this case has gone to appeal, these principles are unaffected by the issue raised on appeal). There is no requirement (either in statute or as a matter of procedural fairness) to afford members of the public the right to make oral representations on a planning application. What fairness requires is acutely fact sensitive and depends on all the circumstances of the case and relevant factors may include whether the person excluded has already made representations, whether they have expressed a wish to speak and wheher they could have added to points made by others, including any oral presentation by officers. Where a public authority voluntarily provides for a process for speaking at a meeting it is obliged to adopt a fair process: R (Citizens UK) v SSHD [2018] EWCA Civ 1812, para 86.

26. The interpretation of planning policy is a question of law for the Court and it must be interpreted objectively in accordance with the language used, read in its proper context: Tesco Stores v Dundee City Council [2012] PTSR 983, para 18.

27. The Court of Appeal (Lindblom LJ) addresses how a decision maker should approach what is now paragraph 177 NPPF in SoS for CLG and Knight Developments Ltd v Wealden DC [2017] JPL 625:

> "63. The policy requires the exercise of planning judgment. The decision-maker must consider whether there are "exceptional circumstances" justifying the granting of planning permission for the development in question, and whether granting permission would be "in the public interest". The three bullet points do not exclude other considerations relevant to those questions. The first requires the decision-maker to consider the "need for the development", including "any national considerations"—for example, the considerations of national policy for housing need and supply. The second bullet point does not refer specifically to alternative sites. It refers to the "cost" and "scope" for development "elsewhere outside the designated area", and to the possibility of meeting of the need for the development "in some other way". In many cases, this will involve the consideration of alternative sites. But the policy does not prescribe for the decision-maker how

alternative sites are to be assessed in any particular case. It does not say that this exercise must relate to the whole of a local planning authority's administrative area, or to an area larger or smaller than that. This will always depend on the circumstances of the case in hand. The third bullet point requires the decision-maker to consider potential harm in the three respects referred to—again, always a matter of planning judgment."

28. Previous decisions are capable of being material considerations given the principle of consistency that like cases should be decided alike. However, to state that like cases should be decided alike presupposes that the earlier case is alike and not distinguishable in some relevant respect. A decision-maker is under no obligation to manifest his disagreement with other decisions which are distinguishable (North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P. & C.R. 137 at paras145-146).

Ground 1

29. The Claimant's case is that the Council failed to follow its constitution and/or acted in a manner which was procedurally unfair so far as concerns the persons allowed to speak at the Committee meeting on 25 July 2023. In order to deal with this argument it is necessary to refer to the relevant provisions of the Council's constitution and what happened before and at the Committee meeting.

The facts

30. Appendix I to the Council's constitution is entitled "Public participation at meetings". Paragraph 3 deals with the Committee and states materially as follows:

"3.1 Criteria for public speakers at meetings of the Planning Committee

3.2 Speakers must give notice to Democratic Services not later than 12.30 pm on the working day before the meeting.

3.3 The number of speakers for each planning application is limited to:

3.3.1 Three persons in favour, three persons against the proposal plus

3.3.2 a representative of the Parish Council, Canterbury Heritage and Design Forum, Whitstable Society, or Herne Bay & District Residents Association in whose area the proposed development is situated;

3.3.3 a representative of an advisory/amenity group or resident association speaking for a proposal, and one against a proposal, whose terms of reference have a direct interest in the proposal;

3.3.4 the applicant or their agent, but not both, who shall also be afforded the opportunity to speak last.

3.3.5 In addition, district councillors who are not members of the committee may be permitted to address the Planning Committee in relation to planning applications in their wards or immediately adjacent to their wards. At the discretion of the Chair of the committee, other councillors whose wards may

> be affected by a planning application may be permitted to address the committee.
>
> […]
>
> 3.5 In circumstances where more than three persons wish to speak in support or as objectors, the first three registered in each case will have the right to speak. Those not speaking shall be provided with the names of the relevant ward councillors and the nominated speakers, in order that they can seek to have their points raised.
>
> 3.6 All persons speaking shall be strictly limited to three minutes each."

31. In a witness statement dated 17 October 2023 Andrea James, the Council's democratic services officer, describes the lead up to the Committee meeting. Ms James refers to being telephoned by Heather Twizell of NE on 20 July who wanted to register as a speaker at the forthcoming Committee meeting. She informed Ms Twizell that the group objector's slot was taken, she would check with colleagues and call Ms Twizell back later. She rang back and left a message stating Ms Twizell could not register in the group objector's slot but could get AONB Kent to represent her views, or ask a ward councillor to represent NE's views or take an individual's slot (if there were any left) at 12.30 on 24 July and speak as an individual. Ms James says "I tried to explain that if they took this slot they would not be put down on the speaker's list as representing a group but would be able through that slot to convey the views of the group." Ms James rang again on 24 July setting out the options and asking her to get in contact as soon as possible if she wished to register as an individual speaker.

32. On 25 July (by which time it was too late to register to speak pursuant to para 3.2 of Appendix 1 to the Constitution) there was an exchange of emails between Ms Twizell and Ms James. At 10.50am Ms Twizell wrote:

> "Thank you for the messages you left me yesterday and last Thursday afternoon following my request last Thursday morning to speak on behalf of Natural England against the above development at tonight's Planning Committee. After checking with colleagues you subsequently advised me via voice message that Natural England could not speak as only a single organisation could speak against the proposal and this slot had already been given to Katie Miller representing the Kent Downs AONB Unit. You suggested some alternatives including asking a Ward councillor to speak on NE's behalf or speaking myself as a private individual. I do not consider that either of these would be appropriate as my sole interest in the case is as a representative of Natural England (as your Authority's statutory advisor on protected landscapes). Instead I am working with Katie Miller who will be presenting a joint statement from both the Kents Downs AONB Unit and Natural England as we share similar concerns."
>
> Ms Twizell nevertheless went on to ask for clarification as to speaking at the Committee on the basis that when the Proposed Development was previously considered by the Committee in April "there were 3 speakers in favour of the development – Iceni Planning Consultants (as the applicant's agent) plus representatives from both Chapel Down and Defined Wines, both *businesses* standing to benefit from permission being granted. As far as I can see none of these three were acting as private individuals so please can you explain to me how all

were allowed to speak when only Katie Miller (representing Kent Downs AONB) was allowed to speak against the proposal both in April and now. For someone not familiar with the workings of local authority committees it doesn't look entirely fair."

33. In a reply timed at 15.04 Ms James stated:

"The Council's constitution lays down the amount of speakers at committee and the order. This provides for 3 persons in favour and 3 persons against the proposal; plus a representative of the Parish Council, Canterbury Heritage and Design Forum, Whitstable Society, or Herne Bay & District Residents Association, in whose are the proposed development is situated; a representative of an advisory/amenity group or resident association speaking for a proposal and one against a proposal, whose terms of reference have a direct interest in the proposal. The people you refer to from the wine companies registered as individuals supporting the application."

34. At 15.50 Ms Twizell emailed again:

"My apologies for labouring the point but you told me I could register to speak as a private individual but not as a representative of Natural England. I did not pursue this option as I (perhaps naively) assumed that this would mean I could only speak in my capacity as a private individual (and as an individual the development does not affect me at all because I live in East Sussex) and therefore I would not be able to make the wider points I would wish to i.e. those concerns raised in the responses I wrote on behalf of Natural England. Both Andrew Carter and Nick Lane were clearly identified during the committee proceedings in their roles working for their respective businesses and their oral statements focussed on general matters relating to the business ambitions and the need for the development. I have to say at the moment I am slightly kicking myself as based on this example it appears that whether one registers as an organisation or an individual is a technicality only and has no bearing on the points which one may make. Based on the examples of Andrew and Nick it appears that I could have registered as an individual and still given exactly the same oral statement as I would have as a representative of Natural England."

35. Ms James states that also on 20 July she was contacted by CPRE Kent to whom she gave the same advice as she had given in the voicemail to Natural England. She rang CPRE Kent again on 24 July and "I repeated the options I had set out on 20 July" and "the lady from CPRE said 'no', she did not wish to register as an individual."

36. Dr Hilary Newport a director of CPRE Kent has also made a witness statement dated 19 October 2023 which states as follows:

"7.On Thursday 20th July I telephoned Democratic Services at CCC, and spoke to a member of the team who I now believe to be Andrea James, requesting to register as a speaker in opposition to the application. It may be worth mentioning at this point that in over twenty years as Director of CPRE Kent, this is the first time I have felt it necessary apply to appear in person before a planning committee, such was our concern at the impacts of this application.

> 8. During that telephone call I was told by Ms James that only one group could register to speak against the application, and that that speaker slot had already been allocated to the Kent Downs AONB unit. Ms James outlined the options available to me, which were to make our views known through the AONB Unit speaker, or through a Ward Councillor. I was also told that, if places remained available to register as an individual speaker by the Monday deadline, I could take one of those places. I do not recall being told that although I would be listed as an individual on the speakers' list, I would nevertheless be able to put across CPRE Kent's views as an organisation.
>
> 9. I do not recall that any firm agreement was reached during the course of the 20th July telephone call, but my firm understanding at that point was that if I were to speak as an individual, that I would be speaking in a personal capacity rather than on behalf of the organisation, as set out in my email of 24 July (the day before the Committee meeting) to the Council's Democratic Services team and a representative of a local organisation that had also sought to speak.
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> 10. On 21st July, I emailed the Case Office with our updated objection to the application.
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> 11. On (I think) 24th July, I was telephoned by Ms James and informed that an individual speaker registration was available. My decision at the time was, that as a member of the public with no particular personal connection to the site, such representation would carry far less weight than a representation made on behalf of CPRE Kent.
>
> 12. I attended the planning meeting on 25th and acknowledge my surprise that the application had four speakers in favour (both the applicant's company and their agent, contrary to CCC's own rules, as well as two representatives of businesses closely involved with the company behind the application, while only one speaker was able to put the case for a decision that respected the importance of the AONB at this location.
>
> 13. CPRE Kent did consider commencing legal proceedings in relation to the decision and indeed instructed solicitors and counsel to prepare a pre-action letter. However, in this case, CPRE Kent trustees took the difficult decision that the organisation could not justify the expense of a full judicial review. For obvious reasons, the trustees of the organisation must very carefully manage the assets that CPRE Kent holds for the long term and across the range of countryside protection activities in which the organisation engages, and the expense of a judicial review was considered too large despite the importance of this site and our concerns over the fairness of the procedure which led to the grant of permission."

37. Dr Newport exhibited an email string to her statement. On 21 July David Condor, a representative of CARE, a volunteer action group (but who was presumably also acting on behalf of CPRE Kent), emailed the Council to ask why CPRE Kent were not being allowed to speak at the forthcoming Committee meeting. The reply from Lauren Wheeler, a Council Democratic Services Officer, sent on 21 July at 14.07 states:

> "The constitution lays down the amount of speakers at committee and the order. This provides for 3 persons in favour, 3 persons against the proposal; plus a **representative** of the Parish Council, Canterbury Heritage and Design Forum, Whitstable Society, or Herne Bay & District Residents Association in whose area the proposed development is situated; a **representative** of an advisory/amenity group or resident association speaking for a proposal, **and one against a proposal**, whose terms of reference have a direct interest in the proposal. We have been in discussion with various organisations regarding the possibility to speak at the upcoming planning committee but can confirm that the objector slot has been filled. Should any other organisation wish to speak, or have any advice already given clarified, they should not hesitate to contact us, it might be they could take an individual speakers slot should there be any left following the deadline."(original emphasis)

38. Mr Condor asked who had taken the objector slot and at 07.48 on 24 July Ms James replied "the first advisory group to contact us to speak as an objector to the application was Kent Downs AONB Unit, so they have that place." Ms James would have seen the email from Lauren Wheeler further down the email string but said nothing further. Mr Condor emailed again asking if CPRE Kent could speak and was told by another Council officer that "We have contacted all organisations who have contacted us indicating they wish to speak and offered them a speakers slot. Of those one organisations have indicated they no longer wanted to speak at the meeting and we await to hear from the other." That reply had been copied to Dr Newport who emailed at 16.56 on 24 July stating: "For clarity, I was offered a slot to speak as an individual but not as an organisational representative. Since our objection is very much as an organisation I declined the opportunity to speak on an individual basis."

39. At the Committee meeting the planning officer introduced the Proposed Development. Then three speakers made representations in favour: Andrew Carter who introduced himself as the CEO of Chapel Down, Henry Sugden who said he was the founder of Defined Wine and Tom Berry, a local wine grower. The sole speaker against the Proposed Development was Katie Miller, Planning Manager for the AONB Unit. Finally the IP's agent spoke, Katie Inglis.

Submissions

40. On behalf of the Claimant, Mr Fullbrook submitted that the Council made three clear errors any one of which would be sufficient to vitiate the decision.

41. First, as a matter of construction, statutory consultees are not "public speakers" so they are not governed by the restrictions in paragraph 3 of Appendix 1 to the constitution. The point was made that officers of the County Council often address the Committee without affecting the availability of other speaking slots. They, together with NE, HE and the AONB Unit are state funded office holders and it would be bizarre to interpret the constitution in a way which limited, e.g., NE's ability to provide advice pursuant to its duty in s.84 of the Countryside and Rights of Way Act 2000. The phrase "public speakers" should be construed as referring to members of the public or groups acting on behalf of members of the public.

42. Second, Mr Fullbrook submitted that nothing in Appendix 1 prevents groups from speaking as a person against a development for the purposes of para 3.3.1 nor does

the phrase "individual slots" appear in the constitution at all. Preventing NE and CPRE Kent from speaking pursuant to para 3.3.1 was a breach of the constitution.

43. Third and in any event, representatives of Chapel Down and Defined Wine were allowed to speak as well as Katie Inglis. They were applicants for planning permission and she was the applicant's agent. Para 3.3.4 makes clear that only the applicant or his/her agent is entitled to speak, not both.

44. On behalf of the Council, Mr Atkinson described the first submission as 'convoluted'. The purpose of the constitution is to control public participation in meetings and strike a balance between keeping meetings of manageable duration while giving an opportunity to speak. The Claimant's approach would allow an unlimited number of speakers who could be described as state funded office holders. "Public speaker" should include anyone who wishes to speak in public at Committee meetings.

45. As to the second point, Mr Atkinson submitted that NE and CPRE Kent could have spoken as individuals under para 3.3.1 which is what they were told by Ms James and that in doing so they would be able to convey the views of the group. Despite that they both chose not to speak. Further, the views of NE were conveyed to the meeting in the OR and by the representative of the AONB Unit and the views of the CPRE Kent were set out in the Addendum OR. There has been no prejudice to either organisation, nor have either of them challenged the Permission.

46. Turning to the third point, Mr Atkinson submitted that neither Chapel Down or Defined Wine were applicants for planning permission and there was nothing to stop individuals "associated with" the application from speaking in support of it provided they registered as required by the constitution which they had.

47. On behalf of the IP, Ms Tafur submitted that the Constitution provides a procedure for public speaking at the Committee by everyone except members of the Committee and officers advising them. As Canterbury is a two tier authority, officers include those from the district and county council. The fact that those wishing to speak under para 3.3.1 have to register as individuals rather than taking an advisory group slot under para 3.3.3 does not mean they could not speak on behalf of their organisation, something that was made clear by Ms James. Finally, neither Chapel Down nor Defined Wine were the applicant but, even if they were, Mr Carter and Mr Sugden were able to register as individuals and there was nothing to prevent them from representing the views of the companies they worked for.

48. Ms Tarfur also submitted that even if there had been a breach of the Constitution that did not of itself render the decision unlawful. A breach of procedure does not render a decision unlawful unless the claimant has suffered material prejudice. The long line of authorities which establish that principle are summarised in R(ClientEarth) v SoS for Business, Energy and Industrial Strategy [2020] PTSR 1709 at para 241. The Claimant had the opportunity to speak but decided not to register as a speaker, even after the Council had made it clear to CPRE Kent (of which she is a member) several days before the committee meeting, that the slot for amenity groups had been taken by the AONB Unit. Neither NE or CPRE Kent had challenged the decision to grant planning permission.

Discussion – breach of the Constitution

49. In my judgment, Appendix 1 of the Council's constitution contains a perfectly straightforward set of rules which govern those members of the public permitted to speak at the Committee but which, regrettably, the Council has singularly failed properly to apply.

50. First, I accept Ms Tarfur's submission that Appendix 1 governs the right of everyone to speak other than members of the Committee itself and Council officers advising the Committee, which includes district council and county council officers, as appropriate. They are, respectively, the decision maker and those employed by the decision maker to advise it.

51. There is no basis in the language of Appendix 1 for creating a subspecies of organisation which is not a "public speaker" based on them being a "state funded office holder with a duty to advise the Council on planning matters", the definition proposed by Mr Fullbrook, or something similar. Nowhere does such a phrase or anything like it appear in Appendix 1. Nor is there anything which suggests it could be implied.

52. Further, such a subspecies would be wholly impractical, requiring Council officers to investigate and consider in individual cases an organisation's statutory functions and funding arrangements. This would be time consuming and give rise to delays and potential uncertainty as to whether a particular organisation falls within the sub-species or not.

53. Finally, the creation of such a sub-species would also be at odds with the evident purpose of a policy such as is set out in Appendix 1, namely to keep Committee meetings manageable in length while at the same time allowing some oral representations to be made. As Ms Tafur pointed out, a great many organisations could fall into the sub-species and while it may be unlikely that all of them would wish to speak about the same planning application, there is plainly scope for many organisations to wish to do so. That would prolong Committee meetings and potentially be unfair as Appendix 1 would not apply and there would be no clear means of requiring a balance of those speaking for or against a proposed development.

54. However, in my view neither is there any basis in the wording of Appendix 1 for confining those registering to speak under para 3.3.1 to 'individuals' as opposed to those representing organisations. No such restriction appears in para 3.3.1, it just refers to "three persons in favour and three persons against." The reference to "advisory/amenity group" is consistent with ensuring that such groups are enabled to make representations even if all the para 3.3.1 slots have been taken by e.g. keen local residents. Otherwise an important amenity group may miss out on the opportunity to make representations at all. But if there are para 3.3.1 slots available, there can be no sensible reason to restrict the ability of those representing an organisation from registering to take one of them.

55. Unfortunately, that is exactly what the Council did. I have set out the evidence at some length above and I need not repeat it. In response to requests from NE and CPRE, all the Council officers needed to say was, 'just register now to take one of the para 3.3.1 slots to make representations on behalf of your organisation'. Instead the officers adopted a muddled approach, put a gloss on Appendix 1 and misled the objectors.

56. Although Ms James says in her witness statement para 19(b) "The purpose of offering them the individual slots under para 3.3.1 was to enable their groups views to be presented", in my judgment that was far from the impression she gave Ms Twizell and Dr Newport. First, the officer was not able immediately to give clear advice to objectors but had to seek advice of her own. Second, top of the list of suggestions she gave Ms Twizell and Dr Newport was that objectors could speak to a ward councillor or get someone already speaking to make their points. This approach is reflected in para 3.5 of Appendix 1 and reinforces the message that the organisation in question had missed the opportunity to speak at the meeting. Only the last suggestion was to register under para 3.3.1. But this was confused by the repeated references to registering under that provision as an "individual" for which there was no justification at all.

57. Ms James states in her witness statement that "I tried to explain that if they took this slot they would not be put down on the speaker's list as representing a group but would be able through that slot to convey the views of the group." That is far from clear evidence that that is what she actually said ("tried to explain") and I prefer the contemporaneous evidence in the various email exchanges to the contrary. Ms Twizell's email dated 25 July at 10.50am refers to "speaking myself as a private individual". Ms James reply did not disabuse her of that, just merely repeated the wording of Appendix 1. Ms Twizell's next email again indicates she was given the impression that she could only speak as an individual. It is nothing to the point to say that Ms Twizell knew full well she could address the meeting. By that time the deadline imposed by para 3.2 of Appendix 1 (12.30pm the day before) for registering to speak had passed.

58. The misleading advice given by Council officers is even more stark in CPRE Kent's case. The email from Lauren Wheeler referring to Appendix 1 lays emphasis on those provisions which refer to a 'representative' as opposed to persons for or against and states "should any other organisation wish to speak… they should not hesitate to contact us, it might be they could take an individual speakers slot should there be any left following the deadline."

59. I find that, whether expressly or impliedly, NE and CPRE Kent were informed that para 3.3.1 slots were for individuals speaking in a personal capacity rather speaking on behalf of an organisation. Further, they were also told that they could take such slots, as individuals, if there were any left after the deadline. That suggested that an exception was being made for them rather than them having a right to register under para 3.3.1. There is no evidence that either organisation was ever told, even at the last minute, that they could speak at the meeting in order to represent the views of their organisations.

60. In my judgment there has therefore been a breach of the Council's constitution and one which had the direct effect of putting off two national organisations who wished to speak at the meeting and who could have spoken consistently with the constitution.

61. I turn to the argument that, by allowing representatives of Chapel Down and Defined Wine to speak, there has been a breach of para 3.3.4 which prohibits an applicant and their agent from speaking. The application for planning permission describes the applicant as 'Gary Walters.' The reference in the 'company (optional)' box is to 'HICO Group with Chapel Down and Defined Wine.' In my judgment there can have

been no purpose to naming any company other than to identify them as an applicant. No alternative reason for doing so was suggested. That they were applicants is consistent with the frequent descriptions of all three companies as applicants in the documentation: the Planning Statement, Environmental Statement and alternative site search. Further, at the Committee meeting Ms Inglis referred to Chapel Down and Defined Wine as applicants.

62. However, I do not consider that allowing individuals from applicant companies to speak pursuant to para 3.3.1 of the constitution is a breach of the constitution as a whole. Just as an individual could register under para 3.3.1 and speak on behalf of an advisory group, there is nothing in the language of para 3.3.1 to prevent a person associated with an applicant from registering to speak. Para 3.3.4 allows one or other of the applicant and agent to speak in addition to (not instead of) other speakers, including those speaking under para 3.3.1, and they will have the opportunity to go last.

63. Further, if anyone associated with an applicant could not speak pursuant to para 3.3.1 then the same problem would arise as if advisory groups could not speak under para 3.3.1. Council officers would be required to investigate the status and business interests of persons registering to speak and potential uncertainty would arise as to how closely connected with an applicant the person registering to speak would have to be. This would be inimical to what should be a straightforward and easy to apply constitution as to who can speak at planning committee meetings.

64. In the event that is wrong and there has been a breach of para 3.3.4, I will go on to consider the implications of that when considering the overall fairness of the procedure adopted by the Council to which I now turn.

Discussion - prejudice

65. Mr Fullbrook submitted that breach of the Council's constitution is enough to render its decision to grant planning permission unlawful, see R(Blacker) v Chelmsford City Council [2021] EWHC3285 (Admin) para 38. That is subject to the court's overall discretion not to grant relief pursuant to s.31(2A) of the Senior Courts Act 1981 but at that stage the onus is on the defendant to show it is highly likely the outcome would have been the same. By contrast, Mr Atkinson and Ms Tarfur submitted that a breach of procedure does not render a decision unlawful unless the claimant has suffered material prejudice, see paragraph 48 above.

66. In my judgment the submissions on behalf of the Council and IP are correct. In Blacker para 38 the court stated that failure to comply with a constitution "renders the resultant decision unlawful and liable to be quashed". In that case there was no breach of the constitution so that the issue of what more needed to be proved never arose and the point is dealt with very briefly. Insofar as it may suggest that such a breach automatically renders a decision 'unlawful', in my judgment the court went too far. By contrast, the general principle is well established that there is no such thing as a technical breach of natural justice, material prejudice must be shown, see the authorities cited in ClientEarth para 241. For two very recent examples which illustrate the point that a breach of procedure must give rise to material prejudice see Bramley Soar Solar Farm Residents Group v SoS for Levelling Up [2023] EWHC

2842 (Admin) and R(Tesco Stores Ltd) v Stockport MBC [2023] EWHC 3154 (Admin).

67. Mr Fullbrook submitted that the Claimant was prejudiced in this case for two reasons. First, as a member of CPRE Kent she had been prejudiced by the fact that they had not been able to address the Committee and put forward the objections to the Proposed Development which she supported. Second, she had taken a deliberate decision not to register to speak herself under para 3.3.1 of the Council's constitution when she could have done because she thought CPRE Kent were going to speak. She had therefore lost the opportunity to speak personally as a direct result of the Council's unlawful approach to its constitution.

68. He also submitted that NE had been prejudiced because the Committee was denied the opportunity to hear its views. That was all the more important because they rarely attend planning committee meetings. Further, NE together with the AONB Unit had been prejudiced by virtue of having to condense their representations into one three minute speaking slot. Finally, in the end result the Council allowed four people spoke in favour of the Proposed Development and only one against. Mr Fullbrook submitted that you cannot assume further representations would not have made a difference, Kelly v LB Hounslow [2010] EWHC 1256 (Admin).

69. It is striking in this case that despite Dr Newport on behalf of CPRE Kent and the Claimant making witness statements in the proceedings, neither of them state what they would have said to the Committee if they had spoken at the meeting. It may be inferred, as Mr Fullbrook invited the court to do, that they would have repeated their objections, expanded on them and made representations about the Medway Appeal. However, the court is not in the business of making assumptions. If a claimant alleges they have been denied an opportunity to make oral representations and as a result has suffered material prejudice they need to be clear about what that prejudice is, what have they been prevented from saying? There is no evidence that either of them would have said any more than is already contained in their written representations. The substance of the objections had been summarised in the OR and Addendum OR, the latter of which specifically drew attention to CPRE Kent's objections in their letter dated 21.7.23. That letter was also circulated to all the members of the Committee by CPRE Kent, see Dr Newport's email dated 24 July 2023 at 16.56. Further, the Medway Appeal was dealt with in the oral representations by Katie Miller on behalf of the AONB Unit and NE.

70. Mr Fullbrook submitted that, if there was any doubt as to whether the Claimant had suffered prejudice then that doubt should be resolved in her favour and the decision quashed, R v Leicester City Justices, ex parte Barrow [1991] 2 QB 260 at p.290D-E. However, that was a very different case where the court found a litigant in person before the Magistrates' Court had been denied all reasonable facilities to enable him to exercise his right of audience.

71. Further, in my judgment this is a very different case from Kelly. There the claimant was a neighbour who was directly affected by a proposed extension and a key issue was the impact on residential amenity. The LPA were in breach of a legitimate expectation that he would be notified of the date when the planning committee would consider the application so he was wholly unaware of the date of the meeting. As the court said at the outset, the case involved an unfortunate concatenation of

circumstances which will rarely be repeated. The court's reference in para 26 to a loss of an opportunity to 'persuade' has to be seen in that context.

72. In this case the Committee had a very full OR which summarised all the objections at length and an Addendum OR which summarised more recent objections. The members had CPRE Kent's letter of objection with whose views Mr Fullbrook said the Claimant was "very much aligned".

73. As to the AONB Unit and NE, the circumstances in which a claimant can rely upon denial of a third party's opportunity to speak at a planning committee meeting were considered in R(Embleton Parish Council) v Northumberland County Council [2013] EWHC 3631 (Admin). As a result of failure to notify the National Trust ("NT") of the date of the meeting they did not attend although the claimant did and made representations. It was said that it would be rare, or comparatively rare, for a claimant to be able to rely upon a failure to consult another, paras 147 & 150. Factors taken into account in the decision that the claimant could not rely upon failure to notify the NT were set out in para 150.

74. In this case, the AONB Unit and NE had the opportunity to make joint oral representations. They had already made lengthy written representations which had been summarised in the OR. The Committee can have been in no doubt that there were significant objections on matters which carried substantial weight. There is no evidence from either of those bodies as to what else they would have wished to say but were prevented from doing so. Neither of them has chosen to challenge the decision or even write a PAP letter. In those circumstances I do not consider it can properly be said that the Claimant is materially prejudiced by the fact they could not both speak at the Committee meeting.

75. There is no evidence that the Committee's decision was unbalanced by the fact it heard oral representations from more supporters than objectors. The Chair summarised the position at the end of the oral presentations and moved to propose the officer's recommendation, commenting as follows:

> "I think you have before you a comprehensive report. You've heard the arguments. We are not in any way wishing to ignore the very important contribution concerning the AONB and Natural England's contribution. What we're doing here is very clearly considering whether this permission should be given for this development because it's in exceptional circumstances. You've heard the reasons. They've been articulated several times. The report I thought explained that very well and very clearly and met the arguments in paragraph 177 of the NPPF. But as you've heard, this is a matter of planning decision making and obviously that is what we're here to do."

That was a balanced approach, in keeping with that of the OR.

76. Taking into account all of the circumstances, including the Council's breach of its constitution (assuming that included allowing more than one applicant to speak), I am not satisfied that the Claimant has suffered material prejudice. Ground 1 therefore fails.

Ground 2

77. The Claimant alleges that the Council failed to give "great weight" to the views of expert consultees and/or failed to give reasons for disagreeing with them.

Submissions

78. This ground relates to objections made to the Proposed Development by HE, NE and the AONB Unit. Mr Fullbrook submitted that although the objections were largely summarised in the early part of the OR under the heading 'Consultations', they were not properly dealt with in the planning officer's analysis.

79. He submitted that it is well established that the views of expert bodies must be given "considerable" weight and a departure from those views requires "cogent and compelling reasons", see Shadwell Estates at para 72. Unless those views are dealt with properly, there would be doubt as to whether the decision contains an error of law and/or the Council will have failed to explain its conclusions on a principal important controversial issue contrary to South Bucks.

80. Mr Fullbrook submitted that further guidance on this issue was provided by Sir Duncan Ouseley (sitting as a High Court Judge) in Watton v Cornwall Council [2023] EWHC 2436. At §30, the Judge held:

> "In my judgment, for legally adequate reasons to be given for conclusions on the principal controversial issues upon which consultees, statutory or non-statutory, have responded, a lawful and properly reasoned conclusion on the principal issues in controversy is likely to require at least some, albeit brief, express consideration of the principal points raised by the objector on those issues, and reasons why they were rejected. Otherwise, the objector will not know if his points have been understood and considered by officers and the Committee, and whether or not their consideration gives rise to an error of law."

81. There is no dispute that this is a case where reasons were required because the Proposed Development is EIA development. The statement of reasons required by reg 30 of the Town and Country Planning (Environmental Impact Assessment) Regs 2017 (SI 2017 No.571) states that the relevant information can be found in the OR and Addendum OR.

82. Mr Fullbrook identified six aspects of the objections which he said the OR does not address, though some overlapped. These were (1) HE's advice that the Proposed Development does not meet paras 197(c) or 206 of the NPPF, (2) NE and the AONB Unit's criticisms of the LVIA, (3) the AONB Unit's 'strong disagreement' with the IP's suggestion that in year 15 of the development the provision of landscape areas within the Site and the strengthening of the field boundaries would mitigate the impacts and effects on the local and wider area, (4) NE and the AONB Unit's advice that granting the application would be premature and site selection should be dealt with through the local plan process, (5) NE and the AONB Unit's advice that there was no evidence of an essential need for Chapel Down and Defined Wine to be co-located which was necessary in order to meet the exceptional circumstances test in para 177 of the NPPF and (6) NE and the AONB Unit's advice that the Proposed Development would have "significant" and "major" adverse impacts on the AONB.

83. He submitted that the officer's analysis failed to address these fundamental objections or give reasons why the officer disagreed with the advice given. That demonstrated the Council had failed to give the necessary "great weight" to the views of these expert bodies and had failed to give adequate reasons.

84. Mr Atkinson submitted that the objections were clearly set out in the OR which addressed the two principal important controversial issues of impact on heritage assets and the AONB. The planning officer was entitled to accept the findings of the LVIA and she gave reasons for doing so. He submitted that this part of the Claimant's case was akin to an impermissible challenge to the merits of the decision. The question of prematurity was not a principal important controversial issue. Further, the officer could only deal with the application in front of her; the benefits of co-location of the two businesses were explained and she was entitled to weigh those in the balance when considering the issue of exceptional circumstances.

85. Ms Tarfur submitted that a local planning authority is entitled to disagree with the views of statutory consultees and has to carry out a balancing exercise including taking into account factors which extend beyond the remit of the statutory consultee. The standard of reasons required in such a case is the same as in other cases, see Sizewell C paras 106-107. It is not necessary for the decision maker to deal with every point, Watton para 31.

86. She submitted that the key issues so far as the AONB was concerned were the level of impact and whether exceptional circumstances existed. As to impact, the main differences between the objectors and the applicant were the effect of the adjacent Canterbury Business Park and the extent to which proposed planting would mitigate the impact of the Proposed Development. It is clear that the Council attributed great weight to the contributions from the statutory advisors and, where the OR did not agree with their views, reasons for that view were given. It was not necessary as a matter of law for the OR to go into the detail of every difference of opinion.

87. As to other matters, Ms Tarfur submitted that the objectors did not profess to have any expertise in issues of need, economic benefit or prematurity in a development plan making context. The latter was not a principal important controversial issue on which reasons for taking a different view were required and the OR explained the reasons for the officer's views on need and co-location.

Discussion

88. In my judgment the OR fairly summarises the objections in the 'Consultation' section. Although para 197(c) of the NPPF is not mentioned, this requires the Council to take into account the desirability of new development making a positive contribution to local character and distinctiveness. It is very clear from the summary of HE's objections that they considered the Proposed Development did not offer any heritage benefits and was therefore contrary to, not only the NPPF, but also s.66(1) and s.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

89. The assessment section of the OR specifically draws attention to these statutory duties, relevant provisions of the NPPF and the Local Plan. The assessment goes on to identify the harm which would be caused to the setting of the nearby grade II* listed building and the harm to the conservation area. There was no suggestion that there

would be any heritage benefits. Accordingly it was a question of identifying the level of harm and weighing that in the balance.

90. In fact it was agreed that the harm to heritage assets would be less than substantial, that the harm to the Conservation Area would be at the lower end and the harm to the listed building would be at the very low end. The OR specifically says that members must "afford considerable weight and importance" to such harm and balance that against the public benefits. Those are described and the OR then concludes that "Overall, it is considered that the harm caused to the heritage assets, to which great weight is attached, is less than substantial and would be outweighed by the public benefits of the proposal. The scheme therefore complies with paragraph 202 of the NPPF." In my judgment there is nothing in the Claimant's criticism relating to the OR's handling of the advice from HE.

91. Turning to impact on the AONB, the first series of objections have to be read in the context that, as a result of them, the application was amended to remove 21,250 sqm of development, more than half of the total, and that as a result the area of development reduced from around 10.9 hectares to around 6.7 hectares.

92. Although NE and the AONB Unit maintained their objections the updated representations focussed on the effect of the adjacent Canterbury Business Park, what was said to be downplaying in the LVIA of impact on landscape character and the loss of the site, the impact of additional planting in year 15, the impact of the height of buildings, lack of need and whether all alternative options had been explored.

93. In the assessment section dealing with the AONB, the OR starts by referring to paras 176&177 of the NPPF and the need for great weight to be given to conserving and enhancing the landscape and the need for exceptional circumstances. That was reflected in the officer's oral presentation at Committee which referred to "two very, very important considerations" namely impact on heritage assets and the AONB. Members can have been in no doubt of the weight to be attached to impact on the AONB and by extension the importance to be attached to any adverse impact upon it reflected in the objections.

94. The OR assesses the factors listed in para 177 starting with need. It sets out fully the expansion needs of both Chapel Down and Defined Wine in a local and national context and the significant benefits to the economy of the Proposed Development which would be enhanced by their co-location. The objections relied upon by Mr Fullbrook were "we cannot see a justification for them to be co-located" (AONB Unit letter 16.12.22) and "No new information is provided to support the assertion that there is an essential need for the development to be located on this site." (AONB Unit letter 13.3.23). That does not put forward any reasons why co-location would not be a benefit or why the Council were not entitled to take into account the benefits of co-location. There is no suggestion in the OR that co-location was some sort of trump card, it was one factor among many that were taken into account.

95. The OR also explains in detail the evidence of alternative sites being explored for the Chapel Down development. The officer considers the work to be robust and demonstrates there is no scope for meeting *Chapel Down's need* outside the AONB (rather than need for the whole of the Proposed Development). The OR then addresses Defined Wine's need for this site because it is already located on the Canterbury

Business Park, where there is no room for expansion and it would be unreasonable to expect them to expand elsewhere.

96. These were matters on which the Council was in a much better position than NE and the AONB Unit to judge and the OR provides more than adequate reasons for forming a different view on this issue from that of the landscape objectors. Insofar as the objectors considered that alternative sites should be considered through the Draft Local Plan, paragraph 2.18 of the text to policy C21 states that "the Council has been unable to identify any suitable alternative locations for B8 and viticulture outside of the AONB." Mr Fullbrook did not point to any alternative locations which the landscape objectors stated should be considered. Further, the Council is in a much better position to judge the weight to be given to any prematurity argument, particularly in the light of the very early stage of the Draft Local Plan and the evidence of economic need. I also accept Ms Tarfur's submission that the issue of prematurity was not a principal important controversial issue on which the Council were required to give separate reasons.

97. The OR goes on to consider the issue of harm to the AONB. A fundamental difference between the IP and objectors was the impact of the existing Canterbury Business Park on the landscape. The OR deals with this in detail, referring to the Site's location, the existing landscape and screening which the officer assessed as "extensive." It then refers to the business park and the height and design of the proposed buildings which would be similar in scale and design to the existing buildings and would match the look and feel of existing buildings on the business park. The OR refers to the LVIA's assessment that there would be local adverse impacts on the character and appearance of the AONB which would reduce over time once proposed planting was established and that impact on the wider area would not be significant or harmful. The OR refers to the amendment to the Proposed Development and the updated LVIA which concluded that the impact would reduce slightly.

98. The OR continues that the impact of the proposal on the character of this part of the AONB would be localised to within the site and the immediate area, with containment provided by existing field boundaries in the short to medium term. In the longer term (15 years), it is anticipated that the proposed planting would soften the impacts and effects on the local and wider area as much as possible. existing containment and proposed planting would in the longer term (15 years) "soften the impacts and effects on the local and wider area as much as possible."

99. The OR concludes as follows as to impact on the AONB:

> "28. The proposal would introduce built development on a greenfield site, which would cause a degree of harm to the landscape value and scenic beauty of the AONB. However, the site surroundings are important as the proposed buildings will be viewed in the context of the commercial buildings that currently exist on the Canterbury Business Park, which to some extent reduces the level of harm. In long distance views, the site is heavily screened by extensive tree coverage.
>
> 29. The scheme appears as an obvious and logical expansion of a successful rural employment site and additional planting is proposed to soften the visibility of the proposed buildings. I find that the proposed development would be harmful to the landscape character and scenic beauty of the AONB, but that, given the limited

> views of the proposal and its context in regard to the Canterbury Business Park, this harm would be at a low level."

100. One of Mr Fullbrook's criticisms was that the OR fails to distinguish between harm to the landscape and visual impact. These paragraphs demonstrate that the officer had that distinction clearly in mind. A fundamental objection of NE and the AONB Unit was to the loss of the land in the AONB with the resultant change in landscape character of the AONB and what they saw as the downplaying in the LVIA of this. The officer recognises there will be harm to the landscape by virtue of new development on a greenfield site in the AONB but considers that the harm would be localised. She goes on to give clear reasons why, taking into account the visibility of the Site, the 'softening' effect of planting and the impact on character of the existing business park, she considers the overall harm to the AONB (taking into account harm to landscape character) would be low.

101. In my judgment the OR deals adequately with the landscape objections from NE and the AONB Unit. Those objectors would have no difficulty understanding why the OR has reached the conclusions it has on impact on the AONB. This was the principal controversial issue, not the finer disagreements as to whether e.g. receptor values considered in the LVIA should be high rather than moderate. To have required the officer to go into that level of detail in the OR would have significantly reduced its utility as an analysis of the issues for members and would have required the officer to give reasons for reasons, something the council is not required to do.

102. For all these reasons ground 2 fails.

Ground 3

103. Under this head the Claimant asserts that the Council failed to have regard to the Medway Appeal and/or failed to give reasons for disagreeing with it.

Facts

104. The day before the Committee were due to consider the application for planning permission in this case, an Inspector's decision was issued refusing planning permission for another viticulture proposal in Medway, Kent, a 15,675 sqm winery including café and visitor centre. On behalf of CPRE Kent, Dr Newport emailed the decision letter to the planning officer and all the members of the Committee at 11am on 25 July describing it as "a very similar winery proposal in an AONB and Green Belt" and drawing attention to paras 110-114 and 140-144 of the decision.

105. No reference was made to the decision at the meeting by the planning officer. It was however, referred to by Katie Miller on behalf of the AONB Unit and NE:

> "An appeal decision for a winery in Medway which was only issued yesterday which also comprised major development in the AONB found that notwithstanding significant contribution to the economy of over 100 million pounds and the creation of over a thousand jobs, this did not represent national considerations and support of the scheme, and the expansion of the wine industry is neither a national nor local priority reflected in planning policy and that the benefits could be delivered by development outside of the AONB. The same considerations apply here and it is

> firmly our view that there is no specific functional need for the facilities to be located at Highland Court in the AONB."

106. The IP's agent also commented on the Medway Appeal decision:

> "We note that reference to the recent decision in Medway, but we have clear differences. It is a different scale, a different scheme and a different location. By contrast, our proposal forms of contained expansion of the existing industrial estate with direct access to the adjacent A2 and is to accommodate the largest and leading brand in the UK wine industry."

Submissions

107. Mr Fullbook submitted that the Inspector in the Medway appeal considered the case for economic need in the context of whether there were exceptional circumstances justifying major development in the AONB, exactly the same issue as arose in this case. The Inspector concluded in DL114:

> "I recognise that the officer's report to Committee gave considerable weight to this matter. However, these figures do not identify national considerations in support of this scheme. The assumptions which underpin them are not sufficiently robust nor do they fully reference the economic case for the other options referred to in this appeal. The need for this scheme in the context of the local economy has not been conclusively made."

108. Mr Fullbrook compared the conclusion that national considerations did not support the development in Medway with what the OR said in para 70 in her overall conclusions in this case: "The development would significantly expand the nationally important viticultural industry in Canterbury, supporting the growth of two Kent businesses including Chapel Down, England's leading and largest winemaker." (emphasis added)

109. Mr Fullbrook submitted that the Council had failed to address the Medway appeal at all, let alone given reasons for departing from the Inspector's conclusion as to the viticulture industry's lack of national importance. It is not necessary for a decisions to be indistinguishable in every respect for them to be relevant. It is enough if they are indistinguishable on an important issue, R(Kinnersley) v Maidstone BC [2023] EWCA Civ 172 at para 30. The inconsistency on this particular issue is so stark that it is insufficient to leave it to the reader to infer an explanation for inconsistent decisions (Gallagher v Secretary of State for Local Government, Transport and the Regions [2002] EWHC 1812 (Admin) para 58). Either the planning officer should have dealt with this orally at the meeting or the Council should have deferred consideration of the application to give proper consideration to the Medway appeal decision.

110. That failure could not be cured by Ms Inglis's assessment of the appeal decision at the meeting. Advice from interested parties cannot be a substitute for officer advice R(Widdington PC) v Uttlesford DC [2023] EWHC 1709 (Admin) at paras 48-49) and an ex post facto rationalisation of the Council's decision is not admissible, R(United Trade Action Group Ltd) v Transport for London [2021] EWCA Civ 1197 at para 125. In any event, Ms Inglis did not address the issue of national importance.

111. Mr Atkinson submitted that the Medway appeal was distinguishable for the reasons given at the Committee meeting by Ms Inglis and there was no requirement for the Committee to provide reasons for reaching a different conclusion. Further, unlike in Medway, there was a specific Draft Local Plan policy which supported viticulture development, C21.

112. He further submitted that the Uttlesford case did not support the proposition relied upon by Mr Fullbrook. The point made in that case was not that advice given by others could not be taken into account, on the contrary the court said that in appropriate circumstances it could, see paras 43 & 44. The problem was that, even taking into account what was said at the meeting, the authority were not properly advised, para 49.

113. Ms Tarfur submitted that the Committee plainly took the Medway decision into account because they had all been sent it before the meeting. However, they were not required to give reasons for reaching a different conclusion in this case on very different facts, the distinguishing features having been pointed out by Ms Inglis.

114. Ms Tarfur also drew attention to the very different nature of the authorities on this issue to the present case. The North Wiltshire decision concerned proposals on the same site where the two decision makers had reached starkly opposing views on whether the site was within the settlement boundary or not; one said it was and the other said it was not. That had critical consequences for the correct planning approach to the development. By contrast, in this case broad evaluative judgments had to be made about the weight to be attached to need and benefit having regard to the detailed evidence in the case. The Council did not have to give reasons for disagreeing on a small point in another decision when making that overall judgment.

115. She also distinguished the authorities which criticise ex post facto rationalisation of the reasons for decisions. She submitted that one had to compare the facts of the present case with the Medway appeal to decide if they were 'like' cases.

Discussion

116. In my judgment Ms Tarfur's last submission is obviously correct. Unless a comparison is made between the Proposed Development and the facts of the Medway appeal it is impossible to know whether they are so similar to a material degree that the Council should have given reasons for distinguishing it. That is quite a different matter from, e.g., supplementing reasons for a decision after the event such as are dealt with in the line of cases referred to in para 125(5) of United Trade Action Group. That would apply if, having made the comparison, the court considered it necessary that reasons for distinguishing the Medway appeal decision should have been given and they were not.

117. I consider that a proper analysis of the Medway appeal decision shows that it was not so similar that reasons for distinguishing it should have been given. One issue in both cases was whether there were exceptional circumstances justifying major development in the AONB. In order to reach a judgment on that issue it was necessary to make an assessment of the matters set out in para 177 of the NPPF including "the need for the development including national considerations and the impact of

permitting or refusing it on the local economy", potential alternatives and harm to the environment.

118. The evidence of need was very different. The appellants in the Medway appeal relied upon a 'preliminary outline economic report' prepared on a very 'high level basis' and which derived from growth plans from the appellant's French vineyard, DL110&112. It was said that the development would "celebrate the importance of wine making, acting as a catalyst for its continued growth and contribution to the national economy." However, the Inspector found that the figures provided were inadequate for making the assessment required by para 177(a) and did not identify national considerations in support of the scheme, DL113&114. He also considered that the assessment under para 177(b) had not been satisfactorily completed, DL122, and that other options had not been fully explored, DL143.

119. The Inspector balanced that against what he found to be significant adverse landscape and visual effects and moderate adverse effects on tranquillity and dark skies in the AONB, DL68&69. He also found that there was less than substantial harm to a conservation area within a modest range, DL101.

120. He concluded in DL152: "The English 'wine revolution' which this scheme seeks to stimulate could in practice be addressed by development outside the AONB and beyond the setting of the CA. The public interest case for why exceptional circumstances might exist in this case has not been satisfactorily made."

121. The Medway Appeal decision letter has to be read as a whole. The context for the Inspector's statement in para 142 that "Expansion of the wine industry is not a national priority" is his rejection of the appellant's economic case (including reliance on a so called 'wine revolution') which did not identify national considerations in support of it.

122. By contrast in the present case the Council accepted both the IP's economic analysis and the 'robust' assessment of alternative sites which led the officer to conclude that the development cannot be located on sites outside the AONB, see the Addendum OR report. The IP's economic analysis included evidence of studies commissioned by the Council that identified a need for economic development which included viticulture and its capacity to support the existing wine industry in Canterbury district and the UK. The Council had also not been able to identify alternative sites for such development and was promoting expansion of the Canterbury Business Park in the draft Local Plan in policy C21 for viticulture. Taken together with the fact that Chapel Down would occupy three quarters of the development and is currently responsible for over 30% of UK wine production, in my judgment the OR was entitled to refer to the Proposed Development in terms that "The development would significantly expand the nationally important viticultural industry in Canterbury, supporting the growth of two Kent businesses including Chapel Down, England's leading and largest winemaker."

123. As Ms Tarfur submitted, in both cases the decision makers were making evaluative judgments on different evidence as to the level of need, what alternatives might exist and the level of harm to the environment. In my judgment it was not necessary for the Council to explain why, on the evidence and in contrast to the Medway Appeal, it

considered that the reference to "national considerations" in para 177 of the NPPF supported granting planning permission for the Proposed Development in this case.

Ground 4

124. This ground asserts that the OR materially misled the Committee in advising that there was no definition of "exceptional circumstances" in para 177 of the NPPF and that this was a matter of planning judgment.

Facts

125. Under the heading 'Character and appearance' the OR sets out paras 176 & 177 of the NPPF and then continued:

> "14. The NPPF sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB which has the highest status of protection in relation to these issues. The scale and extent of development within the AONB should be limited.
>
> 15. The NPPF at paragraph 177 identifies that when considering applications for development within the AONB, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. There is no definition of what constitutes 'exceptional circumstances' and so it is a matter of planning judgement."

Submissions

126. Mr Fullbrook relied on the submissions in his Skeleton Argument that this advice was materially misleading because it led members to believe that the term "exceptional circumstances" had no objective meaning and could mean whatever they wanted it to mean. This is directly contrary to the principle set out in Tesco Stores v Dundee City Council para 19 & 20. Although the term "exceptional circumstances" is not susceptible to precise dictionary definition, the term plainly still has a meaning and, pursuant to R (Mevagissey PC) v Cornwall Council [2013] EWHC 3684 (Admin) para 52, it must mean circumstances that are "unusual" or "rare". As a result of this error he submitted that the officer inevitably failed to address her mind to the question of whether there were any circumstances about the Proposed Development which were "exceptional" in the sense of being "unusual" or "rare".

127. Mr Atkinson submitted that the planning officer's assessment was correct as a matter of law. First, she did not say "exceptional circumstances" means whatever the members wanted, she said that what constitutes exceptional circumstances is a matter of planning judgment. Second, that was correct as a matter of law, see Girling v East Suffolk Council [2020] EWHC 2579 (Admin) para 29 where the court said that the concept of "exceptional circumstances" is deliberately broad and not susceptible to dictionary definition. The OR worked through the assessments that para 177 requires and came to a reasoned conclusion on that issue.

128. Ms Tafur added, in reliance on her Skeleton Argument, that in Mevagissey the court did not purport to establish an interpretation of the phrase "exceptional circumstances"

beyond its natural and ordinary meaning. She also drew attention to the fact that there is no rationality challenge to the OR's conclusions on whether the "exceptional circumstances" test was met.

Discussion

129. In my judgment there is nothing in this point. Paragraph 15 of the OR simply says that what constitutes "exceptional circumstances" is a matter of planning judgment which is self-evidently correct. The OR goes on in paras 17 to 30 to consider the factors set out in para 177 which are relevant to the exceptional circumstances test. The conclusions draw the threads together in para 70:

> "I consider that this proposal meets the 'exceptional circumstances' test as set out in paragraph 177 of the NPPF and it would be in the public interest to permit the proposal. The applicant has demonstrated that there is a need for the development and that there are no alternative sites outside of the AONB to meet this need. The development would significantly expand the nationally important viticultural industry in Canterbury, supporting the growth of two Kent businesses including Chapel Down, England's leading and largest winemaker. The economic benefits of the scheme would be significant. I consider that the public benefits outweigh the harm to heritage assets (these having been given considerable importance and weight) and the loss of agricultural land."

130. Mr Fullbrook did not suggest, rightly in my view, that the failure to expressly mention harm to the AONB in that paragraph means the assessment of exceptional circumstances was flawed. The OR considers that issue at length earlier in the assessment and concludes that the overall harm to the AONB is low (para 29). The issue of "exceptional circumstances" only arose because the Site lies in an AONB and, adopting the benevolent approach towards the construction of officer's planning reports required in Mansell para 42, the officer is to be taken to have brought her detailed assessment in the earlier paragraphs of the report to bear on her briefly expressed overall conclusion in para 70.

131. That is also consistent with the officer's summary of the report given at the Committee meeting. After referring to heritage assets, the planning officer is recorded as saying this:

> "Another key issue is the protection of the area of outstanding natural beauty which the side is within. National policy states that major development within the AONB should only be permitted if it's in exceptional circumstances and if it's in the public interest. In assessing whether there are exceptional circumstances, I have considered the need for the development, the benefits arising from the development, whether the development could be located outside the AONB and the landscape and visual impact and the extent that those can be moderated. I have considered the visual effects of the development on both long and short distance views for within the surrounding area."

132. The officer then refers to visual material illustrating the extent to which the Proposed Development would be visible from various views. She continues "Due to the proximity to the site, views of the buildings would be possible and there obviously would be landscape harm from this view in particular. The Applicant has proposed

additional tree planting to try and soften the impact Obviously there is still a level of harm here though that needs to be considered." The officer refers to another image and then says "Again, there would be landscape harm and visual effects associated with the development, given that is currently greenfield within the AONB and undeveloped, but it is important to consider the context of this particular site being adjacent to the employment site. The need of the development and the benefits are set within the Officer's report, as are the considerations of alternative sites within and outside of the district that the Applicant has considered. The criteria which has been applied is robust and reliable to determine if the location is suitable for the development. As set out in the report, it is considered that the application be approved."

133. In my judgment the OR did not misconstrue the phrase "exceptional circumstances" or mislead the Committee as to the test it had to apply. As the Council was required to do, it considered the exceptional circumstances test and reached reasoned conclusions upon it.

Conclusion

134. For all these reasons this application for judicial review fails.