Appeal Procedure Statement

Home	Farm	Kemnal	Road	Chiel	Ahuret	RR7	AI V
HOHIE	гани	Nellillai	NUau	CHIDI	enui Si		ᄔ

Prepared by:

Pinsent Masons LLP

On behalf of:

Mr and Mrs Selby (Applicant/Appellant)

In relation to a decision to refuse planning permission made by:

The London Borough of Bromley

Planning Application Reference:

22/03243/FULL1



1. **INTRODUCTION**

1.1 This Appeal Procedure Statement has been prepared by Pinsent Masons LLP acting on behalf of Mr and Mrs Selby (the "Appellant"). The Statement accompanies a planning appeal (the "Appeal") submitted by the Appellant against the London Borough of Bromley (the "LPA") in relation to its decision to refuse planning permission for the planning application given reference 22/03243/FULL1 (the "Application"). The Application relates to development at Home Farm, Kemnal Road, Chislehurst BR7 6LY (the "Site").

2. **EXECUTIVE SUMMARY**

- 2.1 The purpose of this Appeal Procedure Statement ("APS") is to set out the Appellant's case for the Appeal to be heard at Inquiry. The Appeal Procedure Guidance sets out three situations when an Inquiry would be appropriate procedure for a planning appeal:¹
 - 2.1.1 there is a clearly explained need for the evidence to be tested through formal questioning by an advocate;
 - 2.1.2 the issues are complex;
 - 2.1.3 the appeal has generated substantial local interest to warrant an Inquiry as opposed to dealing with the case by a hearing.
- 2.2 It should also be clear from the Appellant's Statement of Case that the Appeal relates to a major domestic planning application, and the propoals for the Site have been designed to be one of the most exciting and dramatic visions to come forward anywhere in Greater London in recent years. The Site itself is further complicated by the nature of the existing built form (dwellings and various outbuildings/agricultural buildings), and due to its long planning history which appears not to have been properly considered by the LPA in determining the Application.
- 2.3 We remain of the view that the LPA has not taken the above into consideration in determining the Application, and has also mistakenly disaggregated the various elements of the masterplan, rather than considering the Application and its vision holistically. An Inquiry is therefore necessary to ensure that these matters can be properly addressed. Written representations nor a hearing would not enable the Appellant to put these matters across in sufficient detail and could lead to the Inspector being mistakenly misled. These matters are dealt with more fully in the Statement of Case, however, we wish to draw this general theme to the attention of the Inspector at this juncture.

144418855.1\703128

¹ No reference is made in this APS to other criteria which only relate to enforcement appeals.

2.4 For the detailed reasons set out below, we consider that the most appropriate procedure for the Appeal to be heard is by Inquiry.

3. THE APPLICATION

3.1 The Application, which is the subject of the appeal, proposes the following:

"Demolition of part of Greenacres, demolition of Polo Mews North, demolition of Polo Mews South and demolition of part of The Bothy. Erection of linking extension between Polo Mews North and Polo Mews South. Erection of a two storey extension to The Bothy. Establishment of new vineyard. Provision of new solar panel array. Erection of hydrogen energy plant and equipment. Erection of new single storey dwelling. Rearrangement of the internal access roads." (the "Development").

4. REASONS FOR REFUSAL

- The reasons for refusal (each referred to as a "RfR") set out in the LPA's decision notice dated 6 September 2023, are as follows:
 - 4.1.1 **RfR1** The proposal would result in a form of development which is inappropriate development in the Green Belt. The siting, scale and design of the proposal would also fail to preserve the openness of the Green Belt and would result in harm to the rural character of the locality. The other considerations put forward by the applicant would fail to clearly and demonstrably outweigh the harm by reason of its inappropriateness and other harm. Consequently, very special circumstances have not been demonstrated and the proposal is therefore contrary to the National Planning Policy Framework (2021), London Plan Policy G2, BLP Policies 37, 49 and 51.
 - 4.1.2 RfR2 The proposed alteration, demolition and extensions to the Bothy cottage, Bothy House and flat, by reason of their excessive size, scale and design would be out of scale and out of keeping with the original buildings. The proposal would also have an adverse impact on its setting and its significance as a group, failing to preserve or enhance the character and appearance of the locally listed buildings and Chislehurst Conservation Area, contrary to the National Planning Policy Framework (2021), London Plan Policies D3 and HC1, BLP Policies 37, 49, 51 and 52.
 - 4.1.3 **RfR3 -** The proposal alteration, demolition and extensions to No.1 to No.4 Polo Mews, by reason of its excessive size, scale and design would be out of scale and out of keeping with the original buildings.

The proposed demolition of No.3 and No.4 Polo Mews, alteration, demolition and extensions to No.1 to No.2 Polo Mews would have an adverse impact on its setting and significance of the locally listed buildings as a group, fail to

preserve or enhance the character and appearance of the locally listed buildings and Chislehurst Conservation Area, contrary to the National Planning Policy Framework (2021), London Plan Policies D3 and HC1, BLP Policies 37, 49, 51 and 52.

- 4.1.4 RfR4 The proposal development, by reason of its excessive number of parking spaces would fail to achieve sustainable development. Insufficient information has been provided to confirm adequate cycle storage spaces and electrical vehicle charging point can be provided, contrary to London Plan Policies T5, T6 and T6.1.
- 4.1.5 RfR5 Insufficient and inadequate information has been provided to demonstrate the level of BNG at 18 percent and a 0.3 target score for urban greening factor can be achieved, contrary to London Plan Policies G5 and G6 of the London Plan.
- 4.2 In this APS, the Appellant's Statement of Case which has been prepared in support of the Appeal is referred to as the "SoC".

5. **LEGAL AND POLICY CONTEXT**

- 5.1 Section 319A(6) of the Town and Country Planning Act 1990 provides that the Secretary of State must publish the criteria that are to be applied in making determinations as to the procedure by which appeal proceedings are to be considered.
- 5.2 These criteria are currently set out in the PINS Guidance "Criteria for determining the procedure for planning enforcement, advertisement and discontinuance notice appeals" (21 April 2022) (the "Appeal Procedure Guidance").
- 5.3 The preamble to the Appeal Procedure Guidance confirms that the criteria are guidelines and therefore PINS will use the criteria and evidence available to determine the procedure on a case by case basis.
- 5.4 The Appeal Procedure Guidance sets out three situations when an Inquiry would be appropriate for a planning appeal:²
 - 5.4.1 there is a clearly explained need for the evidence to be tested through formal questioning by an advocate;
 - 5.4.2 the issues are complex;

144418855.1\703128

² No reference is made in this APS to other criteria which only relate to enforcement appeals.

- 5.4.3 the appeal has generated substantial local interest to warrant an Inquiry as opposed to dealing with the case by a hearing.
- 5.5 Even though only one of the above situations need apply to satisfy the appropriateness of proceedings being dealt with by an Inquiry it is considered that each of the situations is relevant and as a result this is a clear case for an Inquiry to be the mechanism for hearing the Appeal.
- 5.6 The criteria set out in the Appeal Procedure Guidance are considered in further detail below in the context of the Application.

6. **APPELLANT'S SUBMISSIONS**

Appropriateness of an Inquiry

- (i) There is a clearly explained need for the evidence to be tested through formal questioning by an advocate
- 6.1 There is a clear need for the evidence to be tested under cross-examination.
- 6.2 Cross-examination will be required in order to test the following issues (though other points may also arise during the course of the appeal process):
 - 6.2.1 the justification of the reasons for refusal (principally RfRs1-3 and RfR 5) as to the following points need to be fully considered and tested at an inquiry:
 - the purported inappropriateness of the Development in the Green Belt and the alleged harm as a result of the siting, scale and design of the Development. Further, the fact that this reason for refusal (RfR1) is in contrast with the findings of the Design Review Panel, who generally supported the design approach of the Development. Cross-examination will therefore be essential to address the issues of siting, scale and design of the Development;
 - (b) the Development allegedly not being able to satisfy the 'very special circumstances' ("VSC") test in accordance with the NPPF. The Appellant will therefore wish to challenge the LPA's evidence in respect of this by cross-examination;
 - the alleged harm to Chislehurst Conservation Area and adverse impact on the setting and significance of the locally listed buildings as a group including consideration of the area's character. It will be necessary to test the LPA's evidence on this point through cross-examination as there is a lack of supporting evidence for these reasons for refusal (RfR2 and RfR3) and the LPA's justification to go

- against the Appellant's Heritage Impact Statement and Landscape and Visual Impact Assessment submitted as part of the Application;
- (d) the apparent insufficiency/inadequacy of the information provided to demonstrate the BNG offer of 18% (RfR5). This will require detailed technical evidence to be tested through cross-examination to understand why the LPA's view is that this level of gain cannot be achieved.
- 6.2.2 the Appellant's case to support and justify the grant of the Application through expert and other witness evidence. In respect of the Appellant's VSC case, this is composed of various elements across a number of technical disciplines;
- 6.2.3 the interpretation and weight to be given to planning policy and planning guidance in determining whether planning permission should be granted for the Development; and
- 6.2.4 whether any adverse impact of the Development as may be identified by the Inspector significantly and demonstrably outweighs the benefits of the Development, which are numerous. This requires cross-examination of the parties' witnesses in respect of the precise nature and extent of the benefits of the Development and the alleged harm.

(ii) The issues are complex

- 6.3 The Application encompasses various matters relating to the Development which are not straightforward and require interrogation, as set out below:
 - 6.3.1 siting, scale and design of the Development each of these aspects will require detailed interrogation, including how they relate to each other and the surrounding area, by reference to appropriate visual material;
 - 6.3.2 appropriate form of development within the Green Belt this will require consideration of the comments of the Design Review Panel and evidence in respect of the specifics of the Development, including comparing the Development against other consented developments in the vicinity of the Site and against the Development Plan;
 - 6.3.3 heritage impact, landscape and visual impact this will require consideration of the alleged harm to heritage assets and first establishing the existing setting of the buildings and surrounding area, evidence will then be required in respect of the parties' respective positions on the impact of the Development with regards to heritage and landscape can be sufficiently and fully interrogated;

- 6.3.4 VSC and benefits of the Development this will require all the benefits of the Development to be considered and tested. Such benefits are complex and include (but are not limited to) the following:
 - (a) Operation through an on-site hydrogen fuel cell to contribute towards achieving net carbon zero targets;
 - (b) Enhancement to the standard of architecture and design in the Conservation Area, and the Borough more widely;
 - (c) Improvements to the landscape, character and visual quality of the area;
 - (d) Biodiversity net gain of 18%;
 - (e) Securing future viable agricultural use of the farm;
 - (f) Enhancement to the character and appearance of the Conservation Area and locally listed buildings;
 - (g) Provision of a public picnic area, community orchard and visitor information board.
- The benefits of the Development, as set out in more detail in the Appellant's SoC, will then need to be balanced against any perceived harm caused by the Development, which is a complex consideration. There is also the further consideration of the "Fall Back" position, which is set out in detail in the Appellant's SoC and will require detailed and careful consideration by the Inspector.

(iii) The appeal has generated a level of local interest such as to warrant an Inquiry

- The Application received only representations from members of the public in response to the public consultation carried out by the LPA. All representations received support the Application. However, it is not unusual for an Application of this sort to not generate a high level of local interest: the Site is not in close promitity to neighbouring properties in the area which would be affected by the Development. Indeed, the closest neighbour, Mr Ertosun of Foxbury Manor, wrote in support of the Application and noted it is his view that the Development will enhance the character of the Chirslehurst Conservation Area.
- Whilst relatively few representations were received in respect of the Application, we consider that given the nature of the unique proposal, particularly the pioneering hydrogen production at the Site, this could generate a high level of local interest and therefore warrants an Inquiry on this basis.

The Application has already generated a large amount of public support, including written comments from the Kemnal Road Residents Association and the Chislehurst Society, who have prepared several articles in their magazine (The Cockpit). We enclose with this statement relevant screenshots of the digital articles shared on Facebook (Appendix 4).

Inappropriateness for a Hearing

- The Appellant considers that in the apparent issues of siting, scale and design issues of the Development would not be given a fair opportunity for resolution by hearing alone. Particularly given this is development in the Green Belt and requires careful consideration of the Appellant's VSC case.
- 6.9 To test the LPA's position robustly, the Appellant needs to be afforded the opportunity to cross-examine the LPA's witnesses. A hearing would not facilitate the full and detailed interrogation of evidence surrounding the LPA's reasons for refusal of the Application and the relative and demonstrable benefits of the Development.
- 6.10 It is likely that evidence and cross-examination will last approximately four to six days because of the extent of the evidence required to be given, which will need to be presented on the following aspects of the Development:
 - 6.10.1 design and architecture;
 - 6.10.2 planning matters including consideration of the Development Plan for the area in which the Site is situated:
 - 6.10.3 landscape and visual impact;
 - 6.10.4 heritage matters assessment of Development's potential impact upon locally listed assets and Conservation Area;
 - 6.10.5 VSC case benefits of the Development and the weight to be given to them;
 - 6.10.6 energy assessment of Development's hydrogen proposal;
 - 6.10.7 BNG assessment of Development's net gain against policy requirements.
- 6.11 The extent of the evidence required and length of time it will take to hear this evidence and cross-examination in itself justifies an inquiry.

7. NOTIFICATION AND ENGAGEMENT WITH THE LPA

7.1 In accordance with PINS Guidance, on 16 February 2024, Pinsent Masons provided notice on the LPA (and PINS) of its intention to submit the appeal and for this to follow the Inquiry procedure (**Appendix 1**).

- 7.2 On 21 February 2024, Pinsent Masons emailed the LPA to set out its summary reasons why the Inquiry procedure was being pursued, in order to reach direction agreement and to assist PINS (**Appendix 2**).
- 7.3 On 29 February 2024, Pinsent Masons chased a response from the LPA to which it replied on the same day to note that it is their view that an Inquiry is not appropriate, although no reasons were provided for this (**Appendix 3**).

8. **CONCLUSIONS**

- 8.1 The Appellant requests that the Appeal is determined by way of the Inquiry procedure.
- An Inquiry would clearly be the most appropriate procedure for considering the Appeal, having regard to the criteria in the Appeal Procedure Guidance. Further, an Inquiry would most assist the Inspector in the process of properly scrutinising the issues with the opportunity to hear the relevant witness evidence and for an advocate to question representatives of each of the parties and interrogate their positions. The Appellant will be represented by Counsel (Jonathan Clay).

Pinsent Masons LLP

1 March 2024

APPENDIX 1

16 FEBRUARY 2024 CORRESPONDENCE

Alex Deinhardt

From: Emma Hargreaves
Sent: 16 February 2024 14:08

To: Jessica.Lai@bromley.gov.uk; Claire.Brew@bromley.gov.uk;

in quiry appeals @planning in spectorate. gov. uk

Cc: planning@bromley.gov.uk; Michael Pocock

Subject: Home Farm - Notification of Appeal (22/03243/FULL1) [PM-AC.FID5854624]

Attachments: Pre-Notification of Appeal (2203243FULL1)(146184646.1).docx

Dear Bromley Council and Planning Inspectorate

Please see the attached notification of the intention to appeal.

Kindly acknowledge receipt.

Yours faithfully

Pinsent Masons LLP

Emma Hargreaves

Associate



+441612500228

+447824307196

For Pinsent Masons LLP

FT EUROPE 2023 WINNER

Thomson Reuters
UK LAW FIRM

Pinsent Masons supports agile working, so please don't feel you need to respond to this email outside your working hours.



A purpose-led professional services business with law at the core

TOWN AND COUNTRY PLANNING ACT 1990 APPEAL UNDER SECTION 78

Notification of intention to submit an appeal

The appeal will be against: Bromley London Borough Council

For: refusal of planning permission (reference noted below)

Appellant(s) name: Mr & Mrs Selby

Site address: Home Farm, Kemnal Road, Chislehurst BR7 6LY

Description of development: Demolition of part of Greenacres, demolition of Polo Mews North, demolition of Polo Mews South and demolition of part of The Bothy. Erection of linking extension between Polo Mews North and Polo Mews South. Erection of a two storey extension to The Bothy. Establishment of new vineyard. Provision of new solar panel array. Erection of hydrogen energy plant and equipment. Erection of new single storey dwelling. Rearrangement of the internal access roads.

Planning application number: 22/03243/FULL1

Likely submission date of appeal: 4 March 2024

Proposed duration of inquiry in days: 6-8 days (this will be clarified in the

SoC)

APPENDIX 2

21 FEBRUARY 2024 CORRESPONDENCE

Alex Deinhardt

From: Emma Hargreaves
Sent: 21 February 2024 17:13

To: Lai, Jessica; Brew, Claire; ESD Planning (Group)

Cc: Michael Pocock

Subject: RE: Home Farm - Notification of Appeal (22/03243/FULL1) [PM-AC.FID5854624]

Dear Bromley Council

Further to my email of 16 February, I wanted to pick up directly to seek to agree between the parties that the appeal should be dealt with by way of Inquiry.

As I am sure you are aware, the Appeal Procedure Guidance sets out three situations when an Inquiry would be appropriate procedure for a planning appeal.

- 1. there is a clearly explained need for the evidence to be tested through formal questioning by an advocate;
- 2. the issues are complex;
- the appeal has generated substantial local interest to warrant an Inquiry as opposed to dealing with the case by a hearing.

The principal matters of the appeal relate to extent of harm to the Green Belt and careful assessment of the 'very special circumstances' (VSCs) set out by the applicant. Indeed, a lot of the VSCs concern matters of a technical nature that cannot be confined to written reps or a hearing and it will be necessary to refer to a number of expert witnesses on matters. The site itself is further complicated by the nature of the existing built form (dwellings and various outbuildings/agricultural buildings), and due to its long planning history. Further, due to the unique nature of the proposal this has generated significant local interest.

We therefore consider that an Inquiry would clearly be the most suitable form for the appeal to be heard and we can provide a formal submission to PINS to set this out in further detail. However, we're mindful that it would be more expedient, and greatly assist PINS, if it could be agreed directly between the parties that the appeal should proceed by way of Inquiry.

Look forward to hearing from you on this.

Kind regards

Emma

Emma Hargreaves

Associate

+441612500228

+447824307196

For Pinsent Masons LLP

Pinsent Masons supports agile working, so please don't feel you need to respond to this email outside your working hours.

0

A purpose-led professional services business with law at the core

From: Emma Hargreaves

Sent: Friday, February 16, 2024 2:08 PM

To: Jessica.Lai@bromley.gov.uk; Claire.Brew@bromley.gov.uk; inquiryappeals@planninginspectorate.gov.uk

Cc: planning@bromley.gov.uk; Michael Pocock <michael.pocock@pinsentmasons.com> Subject: Home Farm - Notification of Appeal (22/03243/FULL1) [PM-AC.FID5854624]

Dear Bromley Council and Planning Inspectorate

Please see the attached notification of the intention to appeal.

Kindly acknowledge receipt.

Yours faithfully **Pinsent Masons LLP**

Emma Hargreaves

Associate

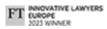


+441612500228



+447824307196

For Pinsent Masons LLP



Thomson Reuters' UK LAW FIRM ESSE BRAND INDEX 2021

Pinsent Masons supports agile working, so please don't feel you need to respond to this email outside your working hours.



A purpose-led professional services business with law at the core

APPENDIX 3

29 FEBRUARY 2024 CORRESPONDENCE

Alex Deinhardt

From: Brew, Claire < Claire.Brew@bromley.gov.uk>

Sent: 29 February 2024 10:30

To: John Escott

Cc: Lai, Jessica; Hamilton, Jake; Emma Hargreaves; Michael Pocock; Jonathan Clay; Alan

Selby; Joe Selby

Subject: [EXTERNAL] RE: Home Farm

Dear John,

I acknowledge receipt of your letter dated 23.2.24, Draft SOCG and the email from Emma Hargreaves dated 16th Feb, the contents of which are noted.

The LPA does not agree that an Inquiry would be the most appropriate procedure for any forthcoming planning appeal in relation to application ref.22/03243/FULL1 and we will be advising PINS accordingly once an appeal is made. Ultimately it will be a matter for the Inspector.

With regard to the Draft SOCG, we will respond to this at the appropriate time in accordance with the timescales set by the Inspector once an appeal has been submitted.

Kind regards,

Claire Brew

Development Management Team Leader – Major Developments Housing, Planning and Regeneration London Borough of Bromley Civic Centre, Stockwell Close, Bromley, BR1 3UH T: 020 8313 4956

DD: 020 8313 4956 DD: 020 8313 4893

Claire.Brew@Bromley.gov.uk

www.bromley.gov.uk

From: John Escott < John@replanning.co.uk>

Sent: 23 February 2024 15:26

To: Lai, Jessica <<u>Jessica.Lai@bromley.gov.uk</u>>; Brew, Claire <<u>Claire.Brew@bromley.gov.uk</u>>; Hamilton, Jake

<<u>Jake.Hamilton@bromley.gov.uk</u>>

Cc: Emma Hargreaves < Emma. Hargreaves@pinsentmasons.com>; Michael Pocock

<michael.pocock@pinsentmasons.com>; Jonathan Clay <JClay@cornerstonebarristers.com>; Alan Selby

<alanmichaelselby@gmail.com>; Joe Selby <joe@selby.capital>

Subject: Home Farm

Jessica,

Please see the attached documents.

IMPORTANT PLEASE NOTE:

Our offices are closing for refurbishment from Monday 4th March for approximately 4 weeks. Robinson Escott will still be open but we will be working from home. We will, therefore, only be contactable via our

emails. If you need to speak to us, please send an email to the person you wish to talk to and they will endeavour to give you a call back.

Kind Regards



Robinson Escott Planning LLP

Tel: 01689 836 334

Email: john@replanning.co.uk

If you consider this email spam, please block using the Mimecast option on your Outlook toolbar. See the Information Security Intranet pages for details. If you have clicked on a suspect link or provided details please report to the IT Service Desk immediately.

APPENDIX 4

SCREENSHOTS OF THE DIGITAL ARTICLES



A Vineyard for Chislehurst.

In a few years at Home Farm, situated at the bottom of Kemnal Road,

a 10-acre vineyard is being planted. There are also plans to build a new hydrogen powered subterranean house on site.

Building proposals are currently before Bromley Council but planning permission is not required to convert most of the farmland into a vineyard. More than 10,500 vines from France and Germany will be planted next spring.

Five grape varieties have been chosen, including Chardonnay, Pinot Noir and Bacchus, and when the vines are established the harvest will be sent to Chapel Down vineyard in Tenterden for production and bottling.

The soil was prepared earlier this year and radishes are currently growing on the ground to add nutrient to the vines. It will be Bromley's first commercial vineyard.

There are also plans for a picnic area within an orchard near the lower entrance to the farm at the end of Beaverwood Road.

The building project involves renovating the existing farm buildings and former converted stables, now empty properties.

More details in Cockpit magazine, published next month or on the Borough planning Portal. Locals can start dreaming about their first Tiarks Tipple or Kemnal Chardonnay, as Chislehurst looks forward to joining the country's wine-growing revolution.

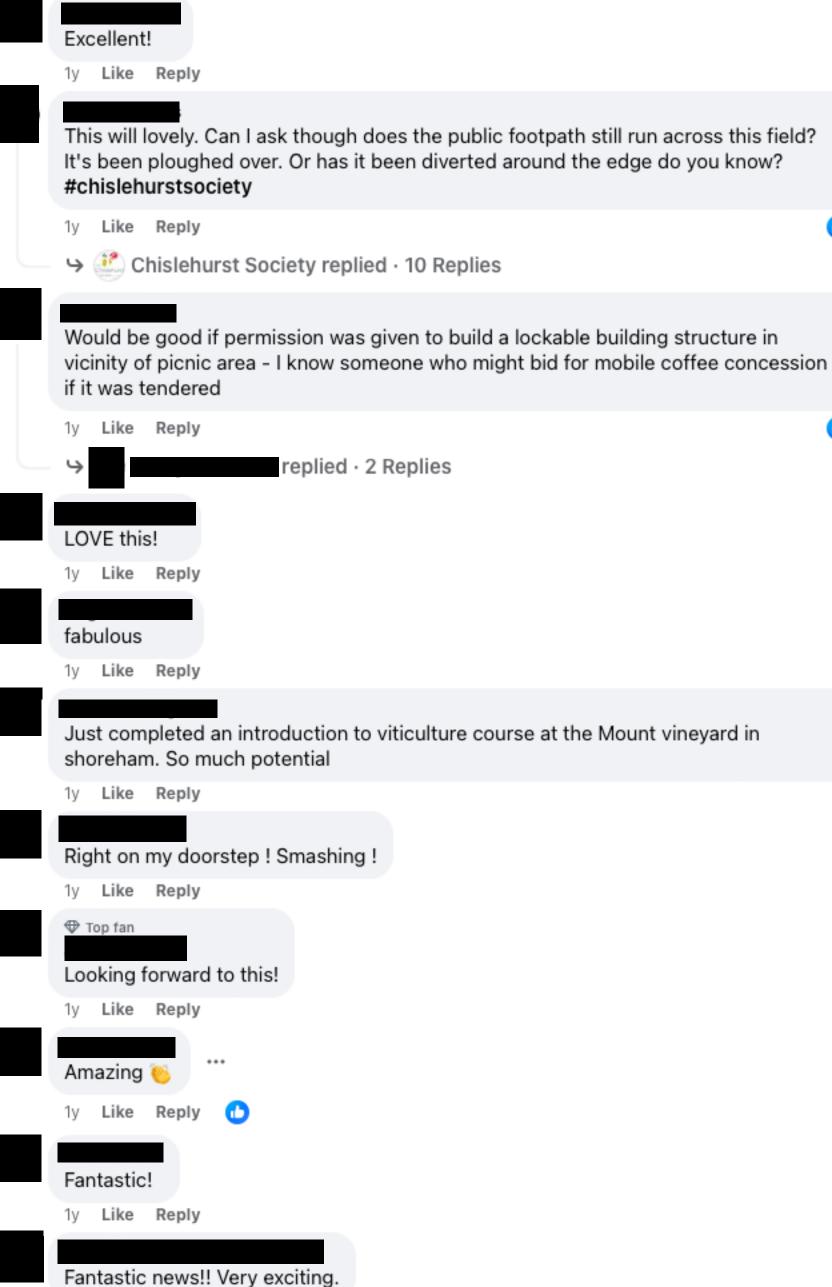
@visitchis

#chislehurst #chislehurstsociety









Like

Reply





June 3, 2023 · 🔇

Just seven months after we broke the news that Chislehurst was soon to get its first vineyard, Home Farm planted their grape vines a few weeks ago.

The Kemnal Road enterprise has been developing nearly 10 acres of farmland since last year and around 10,500 vines have been planted.

Five grape varieties have been chosen, including chardonnay, pinot noir and bacchus, and when the vines are established in a few years the harvest will be sent to Chapel Down winery near Tenterden f... See more







Chislehurst Society October 6, 2023 · 3

The September heatwave saw rapid growth at Home Farm's newly-planted vineyard at the bottom of Kemnal Road.

August's heavy rain and now record September temperatures are seeing the grapevines shoot from their tube supports and a whole network of galvanised steel posts and wires have been installed to help the vines grow upright over the next three years.

More than 10,000 vines from five grape varieties were planted on two large areas of the farm back in May and the plan is to ... See more













3 shares





Comment



Share









