

**Halesowen Area Committee – 16th November 2005**

**Report of the Area Liaison Officer**

**Manor Farm Planning Applications**

**Purpose of Report**

1. To note the position on two retrospective planning applications in relation to Manor Farm (Halesowen Abbey).

**Background**

2. At the request of the Chairman and in accordance with the Terms of Reference for Area Committees, the Committee's views are sought on the two retrospective planning applications in relation to "Halesowen Abbey", the details of which are set out in the appendices to this report.
3. Both applications were considered by the Development Control Committee at its meeting on Monday 7th November, where it was resolved that further consideration of these applications be deferred to a future meeting of the Development Control Committee to enable information only recently received to be considered and submitted to Members of this Committee, together with a copy of the comments made by a conservation officer on these applications at the meeting.

**Finance**

4. There are no specific financial implications arising from the recommendations in this report.

**Law**

5. Planning applications and enforcement are dealt with under the Town and Country Planning Act, 1990.

**Equality Impact**

6. This report takes account of the Council's Equal Opportunities Policy.

## **Recommendation**

7. It is recommended that the Area Committee note the contents of the two retrospective planning applications in relation to Manor Farm.



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**Mike Williams**  
**Area Liaison Officer**

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## **List of Background Papers**

Development Control Committee Planning Applications numbered PO2/1466 and PO3/1572

# PLANNING APPLICATION NUMBER: P02/1466

Type of approval sought	LISTED BUILDING CONSENT
Ward	
Applicant	MR. C. TUDOR
Location:	<b>MANOR FARM, MANOR WAY, HALESOWEN, WEST MIDLANDS, B62 8RJ</b>
Proposal:	<b>ERECTION OF PORCH AND LINK TO OUTBUILDING, AND INSTALLATION OF SATELLITE DISH AND SECURITY LIGHTS (RETROSPECTIVE).</b>
Recommendation summary:	<b>APPROVE SUBJECT TO CONDITIONS</b>

## FURTHER ADDITIONAL INFORMATION

1. This application was due to be considered by Development Control Committee at their meeting of the 25<sup>th</sup> of April 2005. However, just prior to that date Mr Freer, on behalf of Halesowen Abbey Trust, contacted the Council with a request that additional information, by way of a report which he would prepare, be put to the Council's barrister, Philip Petchey. Mr Freer was of the opinion that the brief given to Mr Petchey was deficient and that he was not, therefore, in possession of all of the pertinent facts at the time when he gave his advice. (That advice is summarised below). Mr Freer felt that Mr Petchey's advice would have been different had he known all the facts as they were understood by Halesowen Abbey Trust. Since agreeing that Mr Freer could produce a report the Council has supplied him with very comprehensive background and other information surrounding this application, in response to requests made by him under the Freedom of Information Act 2000.
2. However, to date Mr Freer has not produced a report. Council officers are not aware of any pertinent further information that could have been made available in the brief to Mr Petchey. Therefore, the report set out below can be taken as containing all of the relevant information needed in order to make a decision as to whether or not listed building consent should be granted.

## ADDITIONAL INFORMATION

3. This matter was previously deferred by the Development Control Committee in order to enable independent legal advice to be obtained and further discussions held with English Heritage (EH) on the course of action available to the Council in this matter including whether EH would consider joint action.
4. Discussion with EH did take place and a Brief for Counsel that was agreed to be an accurate statement of the circumstances of the case was produced jointly with them. Regarding the possibility of joint action in relation to enforcement EH stated they did not

intend to take any such action but rather considered the way forward was to include Halesowen Abbey as a national Pilot Project in relation to the Government's current review of Heritage Legislation. Such a project would be a joint venture between the site owner, English Heritage and the Local Authority, potentially also involving other directly interested parties such as Halesowen Abbey Trust. It would lead to a statutorily binding management agreement for the Abbey site that could include provision for public access.

5. Advice was obtained in accordance with the agreed Brief from Philip Petchey, barrister at 2 Harcourt Buildings, Temple, London ('Counsel').

### **The porch and link to outbuildings**

6. Having taken all matters into consideration concerning the porch and link building Counsel concluded that the farmhouse is within the scope of the listing, on the basis that the most southerly part of the ruin is only a short distance from the farmhouse and forms the northern boundary of what might be called the farmyard, or perhaps inner farmyard. This could arguably bring the farmhouse within the curtilage of the principal listed Abbey buildings. He advised that the position is not crystal clear and could be argued either way.
7. Counsel concluded that, on the basis that the farmhouse is within the scope of the listed building it would be difficult to resist the grant of listed building consent on appeal for the erection of the porch and link to the outbuilding.
8. He felt that the Council would have a weak case, particularly in the light of the clear views expressed by the Council's conservation officer as to the porch and link building not detracting from the character and appearance of the listed building. The works were carried out by Mr Tudor at a time when he thought that listed building consent was not required. This was because when he bought the site in 1994, he was told by Dudley MBC that listed building consent was not required. Dudley MBC subsequently took a different view, but only after these works had been carried out. Counsel advises that this is the sort of case where the Council would be at risk both of losing the appeal and of paying Mr Tudor's costs.
9. Counsel also concluded that, on the material before him, it would not be expedient for the Council to take enforcement action for the same reasons but it is of course open for members to take their own view on this.

### **Listed building consent for the satellite dish**

10. Counsel advised that it seems to him that were Dudley MBC to refuse listed building consent for the satellite dish it would have a weak case and again be at risk both of losing the appeal and paying Mr Tudor's costs.

### **The security lighting**

11. Counsel concluded that the barns appear to be within the scope of the listing because they are physically attached to one of the listed buildings. He considered the Council's concerns about cabling and noted that it is Mr Tudor's intention to run the cabling underground and that the planning officer proposes a condition in the following terms.

*'Within 6 months of the date of this permission the electric cabling powering the security lighting hereby approved shall be repositioned so as not to be visible from beyond the site of the farmyard'*

12. Counsel advised that this approach is sensible and that the Council would be in difficulty should it refuse listed building consent and would again be at risk as to costs.

### **Conclusion**

13. In the light of Counsel's advice the original recommendation to 'Approve subject to conditions' put forward in relation to this application remains appropriate.
14. Additionally, participation in the Pilot Project as suggested by English Heritage offers a potential way forward for securing the future conservation and where appropriate enhancement of the Abbey site including provision for public access.

In this context a second recommendation is appropriate ie:

15. That the Committee formally accepts on behalf of the Council the offer from English Heritage to participate as partners in a Pilot Project for the production of a Management Agreement for the future conservation and where appropriate enhancement of the Abbey site including provision for public access.

## **ORIGINAL REPORT NOW FOLLOWS**

### **OBSERVATIONS**

#### **SITE AND SURROUNDINGS**

16. St Mary's Abbey was founded in 1215 as a monastic house of Premonstratensian Canons. It remained in use as a monastery until the 16<sup>th</sup> century when, in common with other English monasteries, it was closed down by Henry VIII. As a result many of the medieval buildings fell into decay or were dismantled or destroyed. The site was granted to Sir John Dudley, Duke of Northumberland and his servant George Tuckey occupied a "mansion house" at the Abbey, probably in the location occupied by the current Victorian Farmhouse. The site was sold to the Lyttleton family in 1558 and it later descended to Lord Cobham. The current farmhouse and ancillary farm buildings

date mainly from the nineteenth century but have some earlier components and these together comprise Manor Abbey Farm whose buildings largely sit over the area of the medieval cloisters.

17. Today, therefore, relatively little medieval stonework still survives above ground although various 19<sup>th</sup> and early 20<sup>th</sup> century excavations of the site clearly indicate the survival of very significant archaeological remains below ground in the core area. Beyond the core of Abbey buildings in the surrounding pasture land the earthwork remains of various features including several flights of medieval fishponds are clearly visible. These are also of great archaeological importance in their own right.
18. The historic, architectural and archaeological significance of the site is recognised in the degree of statutory protection that has been afforded to it. St Mary's Abbey, Halesowen, was first included in the Schedule of Ancient Monuments in 1914 and was added to the statutory list of buildings of historic or architectural interest at grade I in 1950. The scheduling was amended in 1975 to also incorporate the abbey fishponds and precinct earthworks and a new description of the monument was written. In 1975 the description was such that all buildings at the Abbey were scheduled except the farmhouse (since dwellings cannot be scheduled).
19. Additionally, most surviving elements of standing medieval masonry on the site, including a complete building known as "the Infirmary", are in the legal guardianship of English Heritage. The guardianship agreement with the site owner requires EH to be responsible for and to maintain the medieval fabric and gives EH the right to allow limited public access to the guardianship elements of the site.

## **PLANNING HISTORY OF THE SITE AND THE CURRENT APPLICATION**

20. The Council (as evidenced in historic planning files) wrote to English Heritage in 1988 and queried the status of the dilapidated farm buildings and farmhouse since at that time the Council was considering taking action to ensure their repair. English Heritage advised then that all buildings on the site were scheduled except for the farmhouse and that the farmhouse also appeared to be excluded from the listing whereas the rest of the buildings were listed grade 1.
21. It appears that Council officers understandably took that advice at face value and later acted upon it. Specifically, when Manor Abbey Farm was taken over in 1994 by the present owner, Mr Chris Tudor, he was advised that the farmhouse was not a listed building and that, therefore, listed building consent would not be required in relation to its refurbishment.
22. The whole of the rest of the site, however, above and below ground was scheduled. This was significant in relation to the Council's role and responsibilities due to the fact that where a building is both listed and scheduled the scheduling legislation takes

precedence and the provisions of the listing legislation do not apply. (Section 61, Planning (Listed Buildings and Conservation Areas) Act 1990).

23. Virtually any works to a scheduled ancient monument require an application to be made to the Secretary of State for "Scheduled Monument Consent" (SMC) in order for the works to be authorised. The Secretary of State is advised on the granting of consent by the government's heritage advisers (today English Heritage). The local authority has no direct role to play in matters relating to Scheduled Ancient Monuments which are dealt with under the provisions of the Ancient Monuments and Archaeological Areas Act 1979, as amended.
24. When Halesowen Abbey was sold to its present owner in 1994 he, therefore, quite properly applied for and was subsequently granted Scheduled Monument Consent (Ref. HSD9/2/1686 pt.3) in respect of various activities ancillary to the refurbishment of the farmhouse (eg drainage, demolition of outbuildings, repositioning of boundary wall and etc.). Whilst Council officers were informally aware that the process was being gone through there was no formal consultation (indeed none is required under the scheduling legislation) and Council officers were, therefore, unaware of the precise nature of the SMC application. It was a matter for English Heritage to assess and advise upon the granting or otherwise of scheduled monument consent and, thereafter, it was also their responsibility to monitor the implementation of any approved works in order to ensure compliance with the terms of the consent granted and any conditions imposed.
25. In 1995, English Heritage revised the Scheduling of Halesowen Abbey again. As previously, the farmhouse was not an issue in terms of scheduling because its status as a dwelling house meant it could never have been scheduled. However, as a part of that revision the rest of the farm buildings (except in specific areas where elements of the medieval Abbey had been actually "built in") were now to be specifically excluded from the scheduling. They, therefore, reverted in 1995 to the status of grade I listed buildings. Consequently, listed building control through the local authority thereafter pertained, and this remains the case today.
26. In respect of the refurbishment of the farmhouse itself, ongoing since 1994, it was at that time, for the reasons stated above, the view of officers that there was no necessity for the owner to apply for listed building consent. However, in 2001 the position was reviewed in the context of pre-application discussions in respect of the recently withdrawn applications for the conversion of the farm buildings put forward in January 2002 (ie PO2/0136&PO2/0137).
27. In considering what consents would be required in relation to the applications for conversion of the farm buildings, the whole situation pertaining to the status of buildings on the Abbey site was re-assessed. This included the past planning history that had been retained on file, as has been described above. It only then became apparent that the advice regarding the status of the farmhouse received in 1989 from

English Heritage appeared to have been based upon a misconception of theirs arising from an inaccuracy in the original listing description, ie the statement made there that the farmhouse was “modern” when it is actually Victorian.

28. As modern (ie post 1948) the building could not be listed but as Victorian it would in fact be listed, as with the rest of the farm buildings, by virtue of its being within the curtilage of the Abbey. The local authority, in taking the 1989 advice from English Heritage at face value, appear, therefore, to have unwittingly misled the owner of the Abbey as regards requirements for listed building consent for works to the farmhouse. The owner was accordingly advised in 2001 (ie after the misreading of the listing description had been identified) that any further works to the (by now almost completely refurbished) farmhouse that went beyond simple “like for like” repair would require listed building consent.

## **THE CURRENT PLANNING SITUATION AND UNAUTHORISED WORKS**

29. In the absence of any evidence to the contrary council officers initially took the view in 2001 that completed minor works ancillary to the renovation of the farmhouse such as the porch and link extension now the subject of this retrospective application must have been carried out under the terms of the 1994 Scheduled Monument Consent application and, therefore, to the satisfaction of English Heritage. That consent, as explained above, would have overridden any requirement there may otherwise have been for listed building consent. Further, whilst scheduling does not remove the need for planning permission, the works in question were in fact “permitted development” and therefore no planning application to the local authority was or is required in that respect.
30. This understanding of the situation was contradicted when English Heritage investigated the installation of “gabions” (cages of stones for strengthening purposes) into the stream bank adjacent to the rear of the farmhouse and came to the conclusion that the installation did not have the benefit of Scheduled Monument Consent (SMC) and was, therefore, unauthorised. Further scrutiny by English Heritage of the content of the 1994 SMC application revealed there were various other departures from the consent that had been granted and that further unauthorised works had been undertaken without the benefit of SMC, which included the porch extension and link building and associated groundworks.
31. In light of the information now available it is, therefore, apparent that all those works to listed buildings including the farmhouse that did not form part of the 1994 Scheduled Monument Consent and are comprised in the present application are unauthorised. As explained above the farm buildings now all fall within the control of the planning authority due to the 1995 scheduling review that excluded farm buildings from the schedule, bringing them back into listed building control. Therefore, the works now require the granting of listed building consent from the local planning authority in order

for them to be authorised or, in the event of refusal of consent in order for enforcement action to be considered.

32. As also stated above, as regards planning permission this is not required in that all of the unauthorised works forming part of this application fall into the category of “permitted development”. By contrast, the installation of gabions certainly required an application for SMC (it is understood this was not applied for) but, as an engineering operation, it also required planning permission. In this respect the gabions are the subject of the retrospective planning application (PO3/1572) that appears elsewhere on this agenda.

## **PROPOSAL - (UNAUTHORISED WORKS UNDERTAKEN)**

33. Porch and Link Building.

These structures comprise a porch and stepped covered way linking the side elevation/side door of the Victorian farmhouse to a pre-existing and probably contemporary outhouse in the rear garden. The porch and link are built of matching materials to the historic buildings with complementary architectural references (eg gothic detailing and ridge tiles) and they have been finished to a high standard of workmanship. The pitched roof element echoes the gabled style of the side elevation of the farmhouse and the structure as a whole is designed to be clearly subsidiary to the historic buildings and respectful of them.

34. Satellite Dish on Farmhouse and security lights on barns.

In 2002 the site owner installed a satellite dish without prior discussion with your officers. Initially this was positioned on a chimney stack so as to rise above the ridge line of the farmhouse roof, thus being visible from some distance away against the skyline. At around the same time security lights in the form of standard black units of a small scale were attached to the gables of three listed barns adjacent to the inner farm courtyard. The lights illuminate the interior of what is in fact a working farmyard to which there is no public access. There are, however, views into the farmyard from the adjacent area of the Infirmary Building and this is at times accessible to the public. The main visual impact from here that could be considered detrimental to the setting of the Abbey and listed buildings is that of the power lines to the lights which are currently suspended at high level between the farmhouse and the barn buildings.

The applicant has stated that this is a temporary measure only, pending a permanent solution to the ongoing use of the farm buildings being agreed with English Heritage at which point it is intended to route the service runs below ground, with the benefit of SMC.

35. On being informed that both installations would require listed building consent the owner agreed to make this retrospective application. In explaining why an application

had not been made prior to the works being carried out the owner stated that he had thought that the dish was small enough at 450 mm diameter to not require consent and that since the security lighting merely replaced previous lights in the same position that these would also not require consent. In fact listed buildings attract no permitted development rights and listed building consent is required before the undertaking of any works to a listed building which would in any manner affect its character as a building of special architectural or historic interest.

## SUMMARY OF PUBLIC RESPONSE

36. There have been no representations from members of the public in respect of this application.

## SUMMARY OF CONSULTATION RESPONSE

37. English Heritage has no objection to the application and in their written response advise the Council that in their view this is an application which can be determined “in accordance with advice from your conservation staff, and in compliance with Government guidance and development plan policies”. They do, however, advise that particular attention be paid to the presence of a visible satellite dish on a listed building. As described below the dish has now been relocated.
38. Halesowen Abbey Trust (HAT) was also consulted. They have corresponded very extensively both in relation to this application and to the retrospective application for gabions (PO3/1572) that appears elsewhere on this agenda. They also raise very many other generally related issues that are certainly pertinent to the wider management of the Abbey site but are not planning matters and do not, therefore, fall to the Development Control Committee to determine.
39. In relation to this retrospective listed building consent application HAT make the following substantive points (*officer comments follow in italic where appropriate*):
- It must be made clear that the application is retrospective. (*This is the case*).
  - The work was done by the owner without Scheduled Monument Consent (SMC) and it is not logically feasible that the work was done in ignorance of the need for consent. Other works have also been undertaken elsewhere on the site some of which have been pointed out by the public eg involving tipping and EH and DMBC should have been aware of these contraventions at an earlier date. (*The background to the unauthorised works has been explained in section 1 of this report and the issue of unauthorised works was addressed by your officers as soon as practically possible. The undertaking of works without scheduled monument consent is a matter between the owner and EH and they have powers to prosecute contraventions in this respect should they feel it appropriate*).

- SMC takes precedence on this site, and the Trust cite the example of the consent (Ref. HSD9/2/1686 pt.3) that was given by the Secretary of State without reference to DMBC for the demolition of the listed outbuilding that is now linked to the farmhouse by the porch and link building described in this application. The Trust view the fact that the outbuilding has actually been retained as being embarrassing to English Heritage as it calls into question the logic of their granting consent for demolition. In the Trust's view EH would accordingly have opposed the porch and link building if this had been subject to an application for SMC in the proper manner. *(The matter of the granting or otherwise of SMC is a matter for the Secretary of State who acts on advice from EH. It is neither useful nor appropriate for the local authority to speculate as to the likely outcome of SMC applications. However, it should be noted that EH have no objection to the granting of retrospective listed building consent for the porch and link building that form part of this application).*
- The Trust believes that the works undertaken have implications in the context of the Council's Unitary Development Plan Policies since both adopted and draft policies are clearly worded against the prospect of planning permission being granted for damaging archaeological disturbance. *(UDP Archaeology Policies contain a presumption against development that could damage nationally important archaeological remains. In the case of this retrospective application the actual below ground impact of the works cannot be known and in practice these policies cannot be applied, they would in any case constitute a secondary consideration when set against the statutory requirement for scheduled monument consent without which no works could actually be implemented).*
- The Trust believe the Abbey site to be so important that additional notifications of the retrospective applications were required in relation to other bodies (the bodies are not specified) and that in addition the applications should have been referred to the Secretary of State and "called in". In this context the Trust believes the issues raised are very serious and need to be addressed openly and in a transparent manner best suited to a Public Inquiry. *(All of the appropriate notification and advertisement procedures were followed and there are no grounds for referral to the Secretary of State albeit that should members be minded to approve this application it would in fact be subject to referral to the Secretary of State since a grade I listed building is affected).*
- In relation to the detail of the application, the Trust consider that the porch and link building is not in the period vernacular of the 19<sup>th</sup> century farmhouse and they recommend refusal and the controlled removal of the structures with archaeological recording. *(These issues are considered in the "Key Issues" section of this report).*

- The Trust consider the satellite dish and security lighting to be of a lower level of magnitude but note the dish location proposed is still prominent whilst recognising an acceptable location might be found. (*A revised dish position is considered in the “Key Issues” section of this report*).
- Regarding security lighting the Trust consider the impact of its appearance should be judged as if the farm buildings were in good condition rather than in their current dilapidated state. The Trust notes the visual impact of cable runs and in addition ask the authority to consider government guidance on light pollution. (*These issues are considered in the “Key Issues” section of this report*).

## NEW UNITARY DEVELOPMENT PLAN

40. The following policies of the adopted Dudley UDP are relevant:

Policy SO1 (Green Belt) – seeks to check the unrestricted sprawl of the built up area, safeguard the countryside from further encroachment, prevent neighbouring towns from merging into one another, preserve the special character of the area and assist urban regeneration. The siting and design of proposed development should be in keeping with the character and intended function of the area.

Policy NC5 (Sites of Local Importance for Nature Conservation) – where new development is contemplated, the nature conservation interest will be a material consideration in the evaluation of what is proposed.

Policy HE2 (Landscape Heritage Areas) – the Council will resist any development or other works taking place which would be detrimental to the character, quality and historic integrity of the landscape.

Policy HE 9 (Scheduled Ancient Monuments and Other Sites of National Importance) – there will be a presumption against any development which does not ensure the scheduled ancient monuments and non scheduled sites of national importance remain intact and that their setting is not prejudiced.

Policy HE 6 (Listed Buildings) – seeks to safeguard and encourage enhancement of such buildings and resists proposals for demolition or inappropriate alterations or additions.

## KEY ISSUES

41. A fundamentally Key Issue in relation to this application is the need to consider the impact of all of the unauthorised works upon the character and appearance of the listed buildings directly affected and also any impact the works may have upon the setting of listed buildings and upon the site and setting of the scheduled ancient

monument of St Mary's Abbey. In terms of setting the Green Belt and Landscape Heritage Area status of the wider area is also relevant.

42. Another key issue that certainly pertains to this application, but that is wholly a matter for the Secretary of State advised by English Heritage to resolve, relates to the archaeological damage that may have occurred during the digging of foundations for the porch and link extension. It is understood this was undertaken without the benefit of the necessary Scheduled Monument Consent. Relevant to this issue is Halesowen Abbey Trust's view that in determining this application the local authority should require the complete reversal of the latter building works.
43. A further key issue is the retrospective nature of the application and the fact that the works are unauthorised, in the context of whether enforcement action is appropriate.

#### Impact of the unauthorised works.

44. In terms of impact upon the character and appearance of the listed buildings and of impact upon the wider site the unauthorised works can usefully be considered in turn:

#### Porch and Link Building.

45. These structures are described in section 2.1 of this report. The new buildings utilise materials that match those in the two historic buildings that they link and they incorporate complementary architectural detailing (eg in the use of matching ridge tiles and gothic references). The pitched roof element of the new build echoes the gabled style of the side elevation of the listed farmhouse but incorporates a more contemporary glazing style that serves to set the new build apart from the old, as is considered good conservation practice. Good practice is also evident in that the new structure is designed to be clearly subsidiary to the historic buildings and thereby respectful of them. The whole of the new build has been executed to a high standard of workmanship in keeping with the extremely good quality of the refurbishment of the listed farmhouse and outbuilding.
46. The new structures, therefore, in the view of your conservation officers, do not detract from the character and appearance of the listed buildings but complement them and such proposals would have been recommended for approval should a listed building consent application have been made in the usual manner.

#### Satellite Dish

47. Regarding the satellite dish there is no intrinsic reason why the residents of a listed dwelling house should not enjoy the benefits of new technology, if such can be accommodated in a manner that does not compromise the historic buildings character and integrity. There is no doubt that in its original location the satellite dish was visually obtrusive and thus liable to detract from the proper appreciation of the listed

building itself and to be a distraction in the context of the proper enjoyment of the buildings historic surroundings.

48. The satellite dish has, however, now been relocated on the farmhouse chimney stack to sit at the lowest possible level. As a result it is almost entirely hidden from view from any public vantage point, either as a function of distance (from the public footpath network) or by being hidden behind the various ridgelines of the farmhouse. In particular it does not intrude onto views out from the adjacent Infirmary Building that is currently the only publicly accessible element of the core Abbey site. Accordingly, it is felt by your conservation officers that the current location, as shown on the revised plan accompanying this application, is now acceptable both in terms of the character and appearance of the listed building and the setting of the Abbey site.

Security lights on three barns.

49. The standard black lighting units attached to the barns are in themselves functional and not particularly aesthetically pleasing, but they are of a small scale and cause no damage to the fabric of the barns by virtue of being fixed into the mortar joints of the brickwork. In the view of your officers the lights themselves are not inappropriate on such utilitarian buildings in this working location, bearing in mind the purpose for which they are intended and the requirements of health and safety, nor are they visually intrusive in terms of the setting of the Abbey site. As previously mentioned, however, the cabling strung at high level between the farmhouse and barns is considered detrimental to their setting and visually intrusive in the context of the wider site.
50. It is the site owner's stated intention to run the cabling underground as soon as practicable and this can be ensured through the attachment of an appropriate condition, should listed building consent be granted.
51. Regarding the potential for "light pollution" to the wider area or for the lighting to distract visitors within the site, it might be noted that the lights are designed to illuminate activities in the farmyard and to be effective there rather than being designed to shine outwards beyond it. Clearly also, throughout its working life the farmyard has always required lighting to be in place to facilitate safe working. It is of note in this context that the Council has no record of any complaints in respect of lighting to the farmyard, either prior to the installation of the current lights or to date. This may in large part relate to the very considerable distance that Manor Farm lies from any areas accessed by the public at night time and this might be coupled with the fact that the area in question is largely enclosed by buildings. In terms of visual impact within the site there is no practical possibility that the public, who might be allowed access at various times to the adjacent Infirmary Building, would ever in fact be on site during the hours of darkness when the lights might be operated. These considerations suggest that in this instance there is no significant potential for light pollution to cause a nuisance.

Potential archaeological damage caused by the unauthorised construction of the porch and link building and the practical implications of now enforcing the removal of the porch and link structure.

52. This retrospective listed building consent application is not the most appropriate vehicle for the consideration of archaeological issues on this scheduled site. Such issues are more properly the province of the Secretary of State and English Heritage and are better addressed through the Ancient Monuments legislation that takes precedence.
53. This is perhaps best illustrated by the fact that any decision by the local planning authority to enforce the removal of the unauthorised structures to below ground level, as suggested by Halesowen Abbey Trust, could not be implemented without an application first being made for scheduled monument consent seeking approval for the works. It is understood that English Heritage would not support such a course of action since their view, with which your officers concur, is that the removal now of the porch and link building has the potential in itself to cause damage to archaeological remains. Additionally, the removal of the current structure now also has the potential to damage the historic fabric of the listed buildings themselves. It should also be noted that in terms of listed building consent English Heritage has no objection to retrospective consent being granted for the retention of the porch and link building.
54. It remains the case that English Heritage have the powers to bring a prosecution against the owner in relation to all those works undertaken without scheduled monument consent where damage to the monument has been caused. Whilst this is a matter entirely for EH, the current understanding of your officers is that EH do not intend to pursue this course of action.

The potential taking of enforcement action by the local planning authority in respect of the unauthorised works described in this retrospective listed building consent application.

55. Government Planning Policy Guidance Note 18 from the Department of the Environment, Transport and the Regions makes it clear that the taking of enforcement action should be a matter of last resort. The outcome of enforcement action must also clearly be in the public interest. The owner has a right of appeal in these respects to the Secretary of State for the Environment and an award of costs may be made against the Council if it is found on appeal that Enforcement Action was unreasonable, vexatious or frivolous.
56. In relation to this retrospective application for listed building consent it is the case that the owner of the site was initially given incorrect advice to the effect that the farmhouse was not a listed building. A further factor to be acknowledged is the complexity of the overlapping legislative regimes that apply to this site, that have changed over time as the scheduling has been reviewed by English Heritage. It also

appears questionable whether enforcement action to reverse the unauthorised works would have any real benefit in terms of the character and appearance of the listed buildings and scheduled monument. Additionally, it is clear that English Heritage would not support any enforcement action that would result in further ground disturbance and, therefore, no such action could be enforced in practice.

57. Therefore, it is recommended that enforcement action not be pursued by the Council.

## CONCLUSION

58. As is entirely appropriate in respect of this Guardianship Monument it is understood that EH is now holding regular meetings with the site owner to discuss issues of site management and to provide early advice as to what works may require consent. Issues discussed include the tidying of the site to facilitate public access and working towards an appropriate scheme to bring the farm buildings back into a good state of repair and some sort of beneficial use. It is the expressed intention of EH to liaise with the local planning authority in these respects as and when concrete proposals emerge. The site owner is already discussing with your officers how best to approach repairs to the farm buildings now that he has fully refurbished the farmhouse as his family home.
59. It is also understood that EH are holding regular briefings for Halesowen Abbey Trust in order to keep that organisation and its members abreast of developments.
60. The owner is now clearly aware of the legislative and planning framework within which he is required to operate and in the current circumstances it does appear that a framework exists that offers a potential way forward for this highly significant heritage asset. Effective progress can only be achieved through continuing regular dialogue with the owner whose cooperation will be required if the site is to be managed effectively in future with regular public access re-established.
61. It is considered that approval of this application would assist in this ongoing process.
62. For the reasons specified throughout the report it is also considered that the proposal accords with the following policies of the adopted UDP:

Policy SO1 (Green Belt)

Policy NC5 (Sites of Local Importance for Nature Conservation)

Policy HE2 (Landscape Heritage Areas)

HE 9 (Scheduled Ancient Monuments and Other Sites of National Importance)

Policy HE 6 (Listed Buildings) – seeks to safeguard and encourage enhancement of

## RECOMMENDATION

63. That retrospective permission be granted subject to conditions and subject to referral to the Secretary of State, since a grade 1 listed building is affected.

### **Conditions and/or reasons:**

1. This permission shall relate to the submitted plan drawing number MD/CT/934/2 and revised plan drawing Number MD/CT/934/IRI.
2. Within six months of the date of this permission the electric cabling powering the security lighting hereby approved shall be repositioned so as not to be visible from beyond the site of the farmyard.
3. This permission does not convey any form of Scheduled Monument Consent.

# PLANNING APPLICATION NUMBER: P03/1572

Type of approval sought	FULL PLANNING PERMISSION
Ward	HALESOWEN SOUTH
Applicant	MR C. TUDOR,
Location:	<b>MANOR FARM, MANOR WAY, HALESOWEN, WEST MIDLANDS., B62 8RJ</b>
Proposal:	<b>RETROSPECTIVE APPLICATION FOR STONE FLOOD BARRIER CAGES (GABIONS) AND ASSOCIATED EARTHWORKS + INFILLING. AMENDMENT TO WITHDRAWN APPLICATION P02/1818 SHOWING REDUCTION IN HEIGHT OF GABIONS FROM 2.3M TO 1.5M HIGH.</b>
Recommendation summary:	<b>APPROVE SUBJECT TO CONDITIONS</b>

## FURTHER ADDITIONAL INFORMATION

1. This application was due to be considered by Development Control Committee at their meeting of the 25<sup>th</sup> of April 2005. However, just prior to that date Mr Freer, on behalf of Halesowen Abbey Trust, contacted the Council with a request that additional information, by way of a report which he would prepare, be put to the Council's barrister, Philip Petchey. Mr Freer was of the opinion that the brief given to Mr Petchey was deficient and that he was not, therefore, in possession of all of the pertinent facts at the time when he gave his advice. (That advice is summarised below). Mr Freer felt that Mr Petchey's advice would have been different had he known all of the facts as they were understood by Halesowen Abbey Trust. Since agreeing that Mr Freer could produce a report the Council has supplied him with very comprehensive background and other information surrounding this application, in response to requests made by him under the Freedom of Information Act 2000.
2. However, to date Mr Freer has not produced a report. Officers are not aware of any pertinent further information that could have been made available in the brief to Mr Petchey. Therefore, the report set out below can be taken as containing all of the relevant information needed in order to make a decision as to whether or not planning permission should be granted.

## ADDITIONAL INFORMATION

3. This matter was previously deferred by the Development Control Committee in order to enable independent legal advice to be obtained and further discussions held with English Heritage (EH) on the course of action available to the Council in this matter including whether EH would consider joint action.

4. Discussion with EH did take place and a Brief for Counsel that was agreed to be an accurate statement of the circumstances of the case was produced jointly with them. Regarding the possibility of joint action in relation to enforcement EH stated they did not intend to take any such action but rather considered the way forward was to include Halesowen Abbey as a national Pilot Project in relation to the Government's current review of Heritage Legislation. Such a project would be a joint venture between the site owner, English Heritage and the Local Authority, potentially also involving other directly interested parties such as Halesowen Abbey Trust. It would lead to a statutorily binding management agreement for the Abbey site that could include provision for public access.
5. Advice was obtained in accordance with the agreed Brief from Philip Petchey, barrister at 2 Harcourt Buildings, Temple, London ('Counsel').
6. Counsel was asked to advise whether it would be expedient to take enforcement action in respect of the gabions and he advised that it might be, depending on the archaeological advice that is received and whether members consider that it is worthwhile seeking to achieve a reduction in height in the gabions to less than 1.5 metres. He said that if the Council were to choose to pursue this matter it would not be straightforward and he could not guarantee that the Council would ultimately be successful.
7. Counsel advised that the starting point was to discover whether a reduction to a height of less than 1.5 metres could be achieved without damaging the ancient monument. He advised that the Council should either ask English Heritage to give an answer to this or it should obtain its own archaeological advice (and for whom so ever was instructed to discuss the matter with English Heritage).
8. Counsel advised that should the archaeological advice be that were the gabions to be reduced in height to less than 1.5 metres that this would be likely to result in the ancient monument being damaged, he anticipated that it would be unlikely if members would wish to proceed to refuse planning permission or that if they did refuse planning permission the Council would be unlikely to be successful on appeal.
9. Counsel advised that even were an archaeologist to advise that the gabions could be reduced to a height of less than 1.5 metres without damaging the scheduled monument he would not wish to give the impression that he thought the Council would necessarily win on appeal.
10. He also added that Mr Tudor might argue that in aesthetic terms the greater reduction that could be achieved would not be worthwhile. Members will have to take a view about this.
11. The height of 1.5 metres proposed in the current retrospective planning application was arrived at by the owner as an agreed compromise after consultation with the

Environment Agency and English Heritage. Logically this must, therefore, reflect the joint views of the latter organisations that the height as currently proposed (1.5m) would provide protection from stream erosion whilst not being unacceptably visually intrusive after landscaping. Accordingly, neither organisation objects to the retrospective application whilst deploring the fact that gabions were installed without the necessary consents in the first instance.

12. The corollary of all this is that any reduction in height below 1.5 metres would need to be judged, amongst other things, in relation to the potential for stream erosion thereafter, since this could potentially cause damage to the ancient monument.
13. As a result of Counsel's advice the Council commissioned an independent professional archaeological adviser "Mercian Archaeology" to undertake an appraisal of the impact of the installation of the gabions and that of their potential future removal. Mercian Archaeology, who also have expertise in hydrology, advised that the stream would be an active agent for erosion in the location of the gabions if they were now to be removed completely. This would have the potential to damage the ancient monument.
14. By the same token the reduction of the height of the gabions below 1.5 metres, but stopping short of their complete removal, could equally have a potentially damaging effect upon the ancient monument resulting from the subsequent action of the stream, but without a proposed final height having been decided upon any such effect is not currently quantifiable.
15. In terms of any physical damage that may have been caused to the strata of the ancient monument during installation of the gabions it was the view of Mercian Archaeology that such was unlikely to have been significant since the material disturbed appears to have been post-Abbey "levelling up" of the stream valley in order to form a platform for building on the site of the farmhouse. By the same token the disturbance that might be occasioned by the future reduction of the height of the gabions below 1.5 metres, but stopping short of their complete removal, would not appear in itself likely to cause significant damage to archaeological deposits. However, as already noted, the subsequent action of the stream could thereafter have a damaging effect..
16. Counsel went on to advise that were it the case that members were to decide that the gabion wall should be reduced in height and an enforcement notice would be appropriate in this respect then any such reduction would require Scheduled Monument Consent. Counsel advised that enforcement action could be frustrated were it to be the case that the Secretary of State advised by English Heritage decided not to grant Scheduled Monument Consent.
17. Counsel advised that it would be astute to avoid such a problem (ie a possible conflict between planning and scheduled monument consent) from arising and the position regarding scheduled monument consent should therefore, be fully explored before

enforcement action was taken. He advised that if the Council were to decide that an enforcement notice would be appropriate in respect of the gabions, in his opinion the Council (and not Mr Tudor) should be responsible for first obtaining the relevant Scheduled Monument Consent.. In this context it is pertinent to note that English Heritage themselves suggested that 1.5 metres would be an appropriate height for the gabions and that they are the Secretary of State's statutory advisers in relation to the granting or otherwise of Scheduled Monument Consent.

18. Counsel concluded that if it were to be decided that it would not be appropriate to grant Scheduled Monument Consent then it would not be appropriate to serve an enforcement notice either.
19. On balance Counsel advised that a Pilot Scheme as suggested by English Heritage might be a very sensible way forward.

## **CONCLUSION**

20. In the light of Counsel's advice the original recommendation to 'Approve subject to conditions' put forward in relation to this application remains appropriate.

## **ORIGINAL REPORT NOW FOLLOWS**

## **OBSERVATIONS**

### **SITE AND SURROUNDINGS**

21. The application relates to Manor Farm, off the A456 Manor Way trunk road in Halesowen. The site falls within the southern green belt which is also designated agricultural land and is characteristically open countryside. The application site comprises a Victorian farm house and ancillary farm buildings, the historic ruins of St.Mary's Abbey and an Infirmary building. The farm house is located on the southern part of the site and the ground levels immediately beyond its garden lower down to a stream which runs past the southern perimeter.
22. All buildings on the site are Listed Buildings Grade 1, and the whole of the remainder of the site, both above and below ground, except for the farmhouse itself, is a Scheduled Ancient Monument.

## **PROPOSAL**

23. The application seeks retrospective consent for the installation of stone flood barrier cages (gabions) along the southern boundary of the garden to the farm house adjacent to the stream, and associated earthworks and infilling to provide a level garden area adjacent to the farmhouse. Approval was first sought for these works

under application reference P02/1818, however this application was withdrawn following objections from English Heritage and the Environment Agency. As the earthworks have already been carried out and gabions installed at a height of 2.3m, the current application therefore seeks approval to retain the earthworks and infilling but to reduce the height of the gabions to 1.5m in height. Planning permission is required as the works carried out are classified as “engineering operations”.

24. An application for Listed Building Consent, application reference P03/1466, is also being considered on this Committee agenda. This seeks retrospective permission for “*erection of porch and link to outbuilding, and installation of satellite dish, television aerial and security lights*”. These works do not require planning permission, merely Listed Building Consent.
25. The unauthorised works were drawn to the Council’s attention in January 2002 by Halesowen Abbey Trust.
26. The submitted plans identify that isolated pockets of old spoil and rubble near to the farm house was to be removed from the site and relocated on land falling within Bromsgrove District Council. The applicant was advised by Dudley Council officers that the removal of the spoil and rubble from the surface of the land, involving no excavation work, would not require planning permission as this does not constitute an engineering operation. However, they were advised to contact Bromsgrove District Council to check whether its relocation there required permission. Bromsgrove District Council have responded that the applicant has been requested to make a retrospective application for the works within their district.

## UDP AND APPROVED LOCAL POLICY

27. The following policies of the adopted Dudley UDP are relevant:

Policy SO1 (Green Belt) – seeks to check the unrestricted sprawl of the built up area, safeguard the countryside from further encroachment, prevent neighbouring towns from merging into one another, preserve the special character of the area and assist urban regeneration. The siting and design of proposed development should be in keeping with the character and intended function of the area.

Policy NC5 (Sites of Local Importance for Nature Conservation) – where new development is contemplated, the nature conservation interest will be a material consideration in the evaluation of what is proposed.

Policy SO4 (Agriculture) – Development of greenfield land, including the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) should not be permitted unless opportunities have been assessed for accommodating the development on previously developed sites and on land within the boundaries of the existing urban area.

Policy HE2 (Landscape Heritage Areas) – the Council will resist any development or other works taking place which would be detrimental to the character, quality and historic integrity of the landscape.

Policy HE 9 (Scheduled Ancient Monuments and Other Sites of National Importance) – there will be a presumption against any development which does not ensure the scheduled ancient monuments and non scheduled sites of national importance remain intact and that their setting is not prejudiced.

Policy HE 6 (Listed Buildings) – seeks to safeguard and encourage enhancement of such buildings and resists proposals for demolition or inappropriate alterations or additions.

## **DESIGN IMPACT**

28. It is recommended that a geotextile covering be inserted over the face of the gabions in order to encourage growth of plants and reduce the visual impact of the structure upon the wider green belt area to the south of the site. A relevant landscaping condition is recommended and details to be agreed.

## **HIGHWAY IMPACT**

29. The proposal has no impact upon the operation of the highway or highway safety. The Head of Traffic and Road Safety has no objections to the proposal in this respect.

## **ENVIRONMENTAL IMPACT**

30. The Head of Public Protection raises no objections to the proposal.
31. It is recommended that the alterations to the gabions are carried out in accordance with a schedule of works to be agreed beforehand by the Council and landscaping conditions imposed upon any approval. In the circumstances care can be taken to preserve the visual amenities of the wider area and protect potential wildlife habitats in the interests of nature conservation in order to reduce the environmental impact.

## **SUMMARY OF PUBLIC RESPONSE**

32. A site notice was displayed on 7<sup>th</sup> September 2003 and direct notification made to the Halesowen Abbey Trust. As a result several letters of objection have been received from Halesowen Abbey Trust plus a letter from the Worcestershire Archaeological Society. The local MP has also expressed an interest in the application. The objections relate to the following matters.

- i. The works are unauthorised and adversely affect the site of the original Abbott's house and the area is extremely sensitive in terms of archaeology within the scheduled area.
- ii. Scheduled Monument Consent is required and has never been sought. The work is therefore unauthorised and illegally carried out.
- iii. There is no evidence of flooding in this area hence no need for the gabions.
- iv. Archaeological damage may already have been caused to the Scheduled Ancient Monument.
- v. Whilst SMC cannot be sought retrospectively the planning application does provide the means to remediate the situation hence the application should be refused and enforcement action taken.
- vi. Examination of the stretches of banks adjacent to the gabion and on the opposite side of the stream indicate that the banks have adequate stability without need for a retaining structure.
- vii. The part of the application that relates to removal of "spoil and rubble" should be carefully controlled and supervised by means of appropriate conditions on any Scheduled Monument Consent. The said materials should be removed off site to a licensed tip rather than tipped onto adjoining land.
- viii. Bromsgrove District Council should be made aware of the representations of the Trust with regard to the proposed tipping of materials on land within their jurisdiction.
- ix. The proposed tipping would be detrimental to the future expansion of the scheduled area and likely to damage the landscape heritage area and quality of grazing farmland.
- x. If allowed to proceed the tipping would encourage further tipping operations to be undertaken in future.

33. The objectors dispute that planning permission is required for removal of the "spoil and rubble" as the depth of the material to be removed exceeds 2 feet in depth (0.6m). However, for the reasons specified in paragraph 2.4 it is considered that the removal of the spoil and rubble do not require planning permission from Dudley MBC, but that Scheduled Monument Consent and approval of Bromsgrove District Council will be required. The objectors again note that these works have been carried out without the necessary planning permission or Scheduled Monument Consent.

34. It should be noted that all issues regarding Scheduled Monument Consent are matters that English Heritage deal with and the local planning authority have no powers in this respect.

## **OTHER MATERIAL CONSIDERATIONS**

35. A number of statutory bodies have also been consulted regarding this application. These are indicated below:

36. English Heritage

Raise no objections to the planning application but comment that Scheduled Monument Consent will be required. As their paramount concern is to ensure the conservation of the monument, they make the following observations:

*“To remove the wall may be desirable but would not be straight forward. If the wall were removed completely the bank of the stream may have been disturbed to such an extent that it may be more vulnerable to erosion than previously. The removal of the gabions will be an exercise which in itself could cause damage to the monument by disturbing the ground. It would appear that the appropriate compromise is to lower the wall to reduce its visual impact, the physical impact not being reversible. The lowering of the wall will also provide for the returning of the land behind it to something closer to its original profile. To do this will require Scheduled Monumnet Consent.”*

37. Environment Agency

Raise no objections in principle to the proposal subject to conditions.

38. From a structural point of view, the Head of Engineering comments that it has not been possible to ascertain whether the concrete foundations as indicated on the submitted drawings do exist. However, in order to excavate to check this would involve further disturbance of the ground and is not recommended. He therefore advises that without such confirmation the gabions may not be of sufficient strength to withstand vehicular loading.

## KEY ISSUES

39. The key issues include the need to consider the impact of the proposed alterations to the unauthorised gabions and earthworks upon the character and appearance of the listed building and its setting, upon the setting of the Scheduled Ancient Monument of St.Mary’s Abbey and the visual impact of the gabions upon the wider green belt and landscape heritage areas. The retrospective nature of the application is also a consideration and whether enforcement action should be pursued.

40. Although the gabions are not visually characteristic of this area, their reduction in height and provision of further landscaping will help reduce their visual impact upon the character and setting of the Listed Building and the surrounding Green Belt, Landscape Heritage and Agricultural areas, or setting of the Scheduled Ancient Monument. The proposal therefore accords with Council policy in this regard.

41. Although the works so far carried out are unauthorized, the application offers the opportunity to regulate the situation and gives the Council greater control over remediation works to preserve and protect the surroundings. In the circumstances it is considered that it is not expedient to pursue enforcement action as the works, if

approved, will be subject to conditions that can be monitored and breach of condition notices served if the applicant does not adhere to the conditions.

42. As the proposal does not encroach beyond the curtilage of the existing garden of the farm house dwelling there is no implication upon the use of the land for these purposes.

## CONCLUSION

43. For the reasons specified throughout the report it is considered that the proposal accords with the following policies of the adopted UDP subject to control and supervision of the works which has been conditioned.

Policy SO1 (Green Belt)

Policy NC5 (Sites of Local Importance for Nature Conservation)

Policy HE2 (Landscape Heritage Areas)

HE 9 (Scheduled Ancient Monuments and Other Sites of National Importance)

Policy HE 6 (Listed Buildings) – seeks to safeguard and encourage enhancement of

44. In view of the comments from English Heritage referred to in paragraphs 8.2 above it is considered acceptable to lower the height of the gabions rather than remove them altogether and reinstate the land, subject to strict control over the works involved which is conditioned.

## RECOMMENDATION

45. That retrospective permission be granted subject to conditions to control any remediation works required to protect the character and status of the adjoining land and buildings.

### Conditions and/or reasons:

1. The reduction in the height of the gabions hereby approved shall be carried out within 3 months of the date of this approval in accordance with a schedule of works which shall have been previously submitted to and agreed in writing by the Local Planning Authority.
2. Plans showing details including sections of existing retaining walls on the site shall be submitted to and approved by local Planning Authority before development is commenced, and calculations provided to prove that the walls as shown will be capable of supporting the likely future loading from the proposed development, and where work is required to the existing retaining walls to ensure that they will sustain the future loading, the development shall not be occupied until such work has been carried out in accordance with the approved plans.

3. No infilling of material shall take place within 5 metres of the watercourse.
4. Nothing other than uncontaminated excavated natural materials shall be tipped on the site.
5. J02A Landscaping scheme to be submitted
6. J03A \* Implementation of landscaping
7. This permission does not convey any form of Scheduled Monument Consent.