

**Application No:** W 09 / 0215

**Registration Date:** 04/03/09

**Town/Parish Council:**

Bishops Tachbrook

**Case Officer:**

David Edmonds

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**Greys Mallory, Banbury Road, Bishops Tachbrook CV34 6SX**  
Erection of Fattening Pens Access and hard standing FOR Spinney Farm

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This application is being presented to Committee in order to request that enforcement action be taken. The application is also reported to Committee on the request of the applicant.

### **SUMMARY OF REPRESENTATIONS**

#### **Bishops Tachbrook Parish Council:**

The proposed fattening pens '*are low buildings effectively screened from public view. The Parish Council does not feel that it can object on the grounds of massing and scaling*'. The fattening pens are assumed to be outside the boundary of Half Moon Plantation, '*and so and it is not considered that they unduly affect the appearance of the woodland from public rights of way*'. (NB the fattening sheds are actually within Half Moon Plantation boundary).

#### **WDC Cultural Services (Green Infrastructure Manager - GIM):**

A woodland management plan needs to address ecological, silvicultural and landscape issues in a sustainable way. The woodland's position on rising land makes it particularly important in the wider landscape and largely for this reason it is protected as a whole by a Tree Preservation Order. It also provides part of the setting for the Greys Mallory estate, a listed building. Its long term retention as part of the landscape is therefore an important planning aim.

In this context, he considers that on the whole the revised management is a lot better than submitted by the owners former forestry consultant in connection with the application to discharge conditions (application W08/1520). In particular, the evaluation of the current state of the site is a significant step forward. However there remains a real problem relating to the issue of woodland creation. The key condition of the permission granted by the inspector (appeal against enforcement notice regarding the fattening pens) requires the extension of the woodland as compensation for the loss incurred as a result of the construction of pig farrowing houses within the woodland. In this context he considers that a commensurate extension to be at least the area identified by the applicant's agent as covered by this development, ie 360m<sup>2</sup>. This was already a significant compromise as the impact on the woodland is highly likely to extend beyond the footprint of the development itself. Given the evidence seen at our recent site visit that the anticipated adverse impact on trees in the vicinity of the fattening pens has indeed materialised, there can be no further room for negotiation on this point. The woodland extension must extend to a minimum of 360m<sup>2</sup> in order to compensate for the significant loss of mature trees experienced as a result of the development.

The serious decline of trees around the sties and hard standing may not have affected the canopy yet, but it will. Many of these trees will inevitably have to be removed as they die, exposing the sties and degrading the canopy. Given the

almost total coverage with impermeable surface, it will not be realistically possible to re-establish the canopy around the sties.

The argument that large trees cannot be planted in Compartment 11 (adjacent to the hard standing) because of proximity to the track is not valid. Whilst creating a new road adjacent to a mature tree is certainly damaging to that tree, a young tree growing up next to a road will adapt to that environment. A far more significant problem to tree establishment is shade. Some of the recently planted young oaks referred to have been planted beneath the canopy of existing mature oaks and have very little chance of successful establishment.

Whilst some 'feathering' of the woodland edge is desirable in order to increase structural diversity, it is not acceptable that the whole of the woodland extension should lack a high canopy. It is high canopy woodland that has been lost as a result of the development and this should be replaced. The woodland extension ought to extend to 360m<sup>2</sup> of high canopy forest as direct compensation for the loss around the fattening pens. 'Feathering' of the woodland edge should be in addition to this and form part of the enhancements being sought by the inspector.

The application mitigation package cannot achieve commensurate compensation by three separate, small, narrow areas. Moreover the submitted plans make it difficult to scale the size of the compensation package

- Extension area A is described as being 70m<sup>2</sup> and has had an oak tree planted within it. A fairly wide spacing for woodland planting of oaks would be 3m - at this spacing 70m<sup>2</sup> would take 7.7 trees, not 1.
- Extension area B is claimed to be 200m<sup>2</sup>. However, on the plan it would appear to come right up to the existing sties. Since these are clearly in the wood, not all of this area can be considered to be extension. Indeed, only a relatively small part of it appears to fall outside of the area I would consider to be currently wooded.
- Extension area C is described as being 50m × 5m. A 5m linear strip has insufficient width to constitute meaningful woodland extension. A significant issue is that much of the planting appears to be in the shade of existing canopies, and is therefore unlikely to establish successfully. There needs to be clarity as to the extent of the existing canopy both here and elsewhere adjacent to proposed extensions. Ideally, plans should accurately plot the existing canopy edge.

In additions there are a number of detailed points relating to lack of information and detail on various matters including:

- existing tree and natural regeneration protection within the retained pig holding pen
- weed control and grassland creation methodology
- method of coppicing, thinning
- Stocking density of chickens in the woodland.

Some other aspects of the comments are incorporated together with those of the other consultees in the assessment of the application section of the report. This is based on a generic critiques of the Middlemarch Management Plan set out in letters dated 19th June and 18th August 2009 which the GIM acknowledged was an accurate reflection of the both his and the other consultees collective views. He has indicated that there is nothing in the Forestry Commission's views reported below which justifies any significant change in the views summarised above.

### **Warwickshire County Council - Senior Ecologist:**

It is agreed that the Middlemarch Management Plan is a large step forward, particularly the assessment of the current status of the woodland. However

there are concerns regarding the proposed minimal woodland extension and the lack of prescriptive measures

The Senior Ecologist agrees that it is reasonable to suggest that the area of woodland creation should be equivalent to the area lost to the fattening pens, i.e. 0.036ha. Whilst a woodland edge effect is welcome which would benefit the structural diversity of the woodland, she notes that this is less than 0.036ha. The condition imposed by the Inspector is not overly descriptive and indicates "an extension of the woodland" and in ecological terms, I would suggest that a woodland edge effect would be more beneficial overall in terms of its potential benefits to protected species on site such as great crested newts and possibly bats. Whilst the condition does not state the size of the woodland extension required, it does seem reasonable to defend the 0.036ha figure in this instance.

There are a number of detailed points about the prescriptive measures including:

- the Middlemarch plan acknowledges that the chickens may have a detrimental affect but lacks prescription as to stocking densities and chicken rotation together with the monitoring regime to ensure does not continue to be overgrazed.
- Need for an annual monitoring report to be sent to the Council covering issues such as stocking densities.
- Woodland extension - compartment 12 (adjacent to access track). This supposedly 70 square metre area is already woodland so there would be no gain.
- Proposed woodland extension along S.W Boundary together with compartment 12 amounts to 150 square metres, substantially short of the 360 square metres in one block that is commensurate with the tree loss around the fattening sheds.
- There is scope to extend planting along the S.W. Boundary without significantly interrupting the owner's agricultural activities.

Some other aspect of her comments are incorporated together with those of the other consultees in the assessment of the application section of the report. This is based on generic critiques of the Middlemarch Management Plan set out in letters dated 19th June and 18th August 2009 which the Senior Ecologist has confirmed is an accurate reflection of both hers and the other key consultees collective views.

Regarding the Forestry Commission (FC) views summarised later in this report she confirms that her views are largely unchanged. Whether the Management Plan is secured by a condition or an obligation is a decision for the Council. She considers that the FC advice that one meaningful block of trees and shrubs be provided of equivalent size and area to that used for pig rearing in the woodland strengthens the case for a larger extension to the woodland and in one block which is different to that proposed by Middlemarch. Therefore the outstanding key ecological concern remains that the woodland extension needs to be provided in one 360 square metre block.

### **Rhodes Rural Planning and Land Management (RRP)(Agricultural consultants):**

The Middlemarch Management Plan represents a more professional approach, however, the proposal not to replace the area of woodland flies in the face of the Inspectors conditions. There are also some ambiguities in relation to how the woodland has been used previously.

The report acknowledges that chickens may have a detrimental effect and she states "current observations both at Spinney Farm and other chicken used

woodlands suggest that chickens have a detrimental effect at least in the short term when they are penned in, although the vegetation is likely to re-establish once the chickens are rotated to the next patch. It is also likely that high densities of chickens will have a more concentrated fertilisation affect that could be detrimental to a diverse ground flora”.

It is acknowledged that the only evidence for the agricultural practice of poultry grazing in woodland is where the poultry were acting as weed suppressants for the establishment of trees for timber production. The issue of damage to ground flora is noted with the poultry having to be removed by year five. This is a tacit acknowledgement that grazing poultry will have an affect on ground flora. In terms of the impact of poultry on the woodland, whilst the report asserts that poultry may be beneficial, it acknowledges that there is no evidence to support this contention and that monitoring is therefore integral. However, the plan presents no view as to how this could be carried out.

There are a number of specific points including:

- There is no evidence to substantiate the claim in the report that the wood had historically been used for keeping of pigs, cattle, sheep, chickens and ducks
- The proposed tree planting is not enough to compensate for tree loss which it is agreed should be 360 square metres.

There are a number of other detailed flaws which have been incorporated together with those of the other consultees in the assessment of the application section of the report. This is based on generic critiques of the Middlemarch Management Plan set out in letters dated 19th June and 18th August 2009 which RRP has confirmed is an accurate reflection of the both his and the other key consultees collective views.

### **Forestry Commission (FC):**

The FC first got involved in the site following a request by the owner to visit it made in January 2007. Their response draws upon various inputs they have made to the assessment of the issue of tree loss resulting from the construction and retention of the fattening sheds and the use of the woodland for agriculture. This started at the pre-enforcement stage in 2007 and continued with the assessment of the Peter Scott Woodland Management Plan submitted in an effort to discharge the condition 2 of the Planning Inspectorate planning permission. The FC have been asked to comment further on the assessment of this application and the associated woodland management plans which is a different application albeit one broadly relating to the same development.

The FC initial response to the application was to state that they have commented on this case and that all previous correspondence still stands. However since it is a discrete application with a mitigation package, the FC were asked to comment specifically on it.

The report of their response is based mainly but not exclusively on a letter dated 17th March 2010 and their previous final summary of 24th February 2010. These were written in an attempt to draw the various pieces of correspondence together. The letter of 17th March followed requests made by the appellants to clarify various points in previous correspondence. It is emphasised for the purposes of brevity that the following is a summary of these and other responses.

The FC emphasise that they are not a statutory consultee and that they do not comment on the specific merits of any particular application. However they do

provide comments on woodland related issues such as the mitigation package proposed as part of this application.

They start with highlighting their interpretation of the Inspectors decision which was to permit the retention of the fattening sheds subject to:

- an agreed woodland management plan for Half Moon Plantation (TPO area)
- an agreed habitat creation plan for Half Moon Plantation (TPO area)
- agreed landscape proposals for the surrounding land within the applicant's ownership

The FC states in terms of woodland management/ habitat creation that the July version of the Middlemarch Management Plan meets the requirements of sustainable forestry practice. In terms of the keeping of poultry and ducks, it states that the ground flora has the capacity to recover provided agricultural management practices are undertaken properly and notes that there are other agencies involved with monitoring animal welfare which may be able to influence the maintenance of woodland.

Regarding the potential for meaningful compensatory woodland creation, the FC offers the following advice by way of specifications:

- one meaningful block of trees and shrubs on the western edge of Half Moon Spinney
- of equivalent size and area to that used for the pig rearing within the woodland
- to be created from native species or those found within Half Moon Spinney
- to avoid planting under the canopy of existing trees
- to plant shrub species closest to where access, buildings and excavations exist, and leaving trees at least 10m from buildings
- that planted trees and shrubs be at 3m x 3m centres, subject to the above conditions
- that trees and shrubs be maintained, and replaced if they fail, until fully established – circa year 10.

Therefore as confirmed in the e-mail of 24th February 2010, the FC accept the appropriate mitigation for the loss of woodland from the retention of the fattening sheds and associated development should involve a new woodland extension of the same size and a similar shape. They do not support planting of trees adjacent to the concrete apron or on the steep slopes close to the agricultural building.

The FC state that the area lost by the footprint of the development which they assert is 1% of the Half Moon Plantation is small and has a localised impact on species poor woodland. However as previously stated (letters of 9th January 2007 and 17th November 2008) this loss is significant and has the potential to result in the loss of a segment of the woodland encompassing the fattening pens and the adjacent outdoor pig area adjacent to the fattening shed such that it would not be able to enjoy the shade and shelter provided by the woodland in the long term. In the same letter they advised that the outdoor pig area should not be used for a 5 year period to this part of the woodland which has the signs of overgrazing (e.g poaching, nitrification of soils and bark stripping) to recover. (NB It is pointed out that based on a footprint of 360 sq metres out of a woodland area of 1.5 hectares, this would be 2.5% of the area).

## **Warwickshire County Council - Community & Environment Legal Service:**

The case solicitor, formerly of WDC Legal Services, has been involved in many of the discussions relating to the method of securing the proposed woodland management and extension plan.

The starting point of the assessment is the Inspector's decision. Taking account of his reasoning, he found on the evidence before him at that time that any harm caused by the construction and retention of the fattening sheds would be mitigated by the overall benefit to the woodland as a whole as a result of the implementation of a management and extension scheme. Your officers view is that the positive benefit of the mitigation package should be commensurate with the need to mitigate the harm to the woodland as a whole.

The WDC legal adviser is critical of the vagueness of the wording of the proposed 5 year management plan *'This report details a five year management plan for the woodland with aspirations for the long-term. It is anticipated that the plan will be reviewed in detail after five years and amended as appropriate for the following five years.'* The use of words such as *'aspirations'* and *'anticipated'* are particularly vague and any requirement to take such action would, in my view, be unenforceable. This could result in the applicant refusing to review or amend the Scheme after the five year period and the Council having no recourse to compel the Applicant to take such action. It may be that the applicant has taken the five year period from the position where 'after care' conditions are imposed based on this being a sufficient period for any new trees that are planted to become established. This however does not take into account the continuing need for a grazing program which will be required for as long as the pig/chicken pens are used.

Therefore he considers that the Woodland Management plan ought to be secured by way of a planning obligation which would provide that the applicant will review and amend (if appropriate) the scheme after the five year period (or after every five years) and that the Scheme be submitted to and approved by the Council. Further, the agreement could also provide that the applicant will cease the use of the development and will remove the same if he fails to submit the Scheme within a specific period or he submits the scheme and it is not approved by the Council.

### **Public Responses:**

One response received from Mrs Josephine Argyle Robinson, representing the family of the previous owner of the Greys Mallory Estate. This relates to a specific issue of whether the fattening sheds were constructed on an existing concrete base from any historical constructions in this part of the woodland. This issue was raised at the 2008 Inquiry into the enforcement notice regarding the fattening sheds at which the owner gave evidence that the fattening sheds were constructed on hardcore he discovered hidden under leaves and soil which he thought related to the use of this part of the woodland as a landing point of a 'zip slide' for scouts.

She states there was no concrete pad or hard standing of any kind in the wood. She states that her brother did have a variety of adventure rope courses set up including aerial runways for Scouts, Youth Club members and other youths but this required no concrete pad or hard standing etc. of any kind. The ropes were fixed to trees only and the youngsters landed on the earth or in the branches of trees.

## **RELEVANT POLICIES**

- DP3 - Natural and Historic Environment and Landscape (Warwick District Local Plan 1996 - 2011)
- DAP11 - Protecting Historic Parks and Gardens (Warwick District Local Plan 1996 - 2011)
- DAP4 - Protection of Listed Buildings (Warwick District Local Plan 1996 - 2011)
- Warwickshire Landscape Guidelines SPG

## **RELEVANT PLANNING HISTORY**

Some members may recall that the planning history of the whole Greys Mallory estate, particularly the agricultural applications is extensive but only indirectly relevant. For the purposes of brevity, this summary is largely restricted to the fattening sheds site within Half Moon Plantation.

- **Autumn 2006** - commencement of investigation into alleged unauthorised construction of fattening pens within Half Moon Plantation
- **February 2007** - Half Moon Plantation designated as Woodland TPO.
- **March 2007:** Planning Committee endorsed recommendation to take enforcement action to remove the fattening sheds in Half Moon Plantation.
- **September 2007:** Refusal of planning permission for retention of same fattening sheds (W07/0331)
- **April 2008:** Three appeal decisions following public inquiry in February 2008 in respect of the enforcement notices relating to the pig farrowing house, the pig fattening pens and caravan for residential occupation . The enforcement notice regarding the fattening pens was quashed and planning permission granted to retain them subject to conditions. Condition 2 is worded as follows:

'The buildings, concrete and hard core access road and associated engineering works shall be removed in their entirety, including all materials arising from such demolition and removal, in accordance with the above method statement, within six months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Within three months of the date of this decision schemes for (a) woodland management and habitat creation within the area covered by the Half Moon Plantation Tree Preservation Order and (b) the landscaping of the appeal site and surrounding land within the control of the appellant including the extension of the woodland alongside the western boundary of Half Moon Plantation, up to the hard standings, and the removal of the conifer hedge along the north-west boundary and its replacement by a native mixed hedgerow between the barn to the south-west and the north-eastern end of the sow and gilt pens, shall have been submitted for the written approval of the Local Planning Authority, and the schemes shall include details of species, sizes, spacing and a timetable for their implementation.

(ii) Within eleven months of the date of this decision the schemes shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve a scheme or fail to give decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- **September 2008:** Application to discharge condition 2 of Inspectorate planning permission (W/08/1520) submitted outside the timetable specified by 2i), above. The application consisted of a Woodland Management Plan from Peter Scott Tree Care. Initially, it was treated as a valid planning application and consultation exercise commenced, but it was concluded in

February 2009, after receipt of legal advice, that it was invalid because it was submitted outside the Inspectorate timetable for condition 2.

- **October 2008:** Inclusion of the whole of the Greys Mallory Estate, including the application site on the WDC local list of historic parks and gardens.
- **March 2009:** Appeal against non determination of application W/08/1520 - Inspectorate declared appeal as valid because the Council had initially treated it as valid.
- **April 2009:** Enforcement investigation commenced into alleged unauthorised construction of a hardstanding and underground tank adjacent to concrete service road to the fattening sheds within Half Moon Plantation.
- **August 2009:** Appeal against non determination of W/08/1520 withdrawn.

## **KEY ISSUES**

### **The Site and its Location**

The application site lies within a circa 8 hectares Edwardian country house mini estate associated with Greys Mallory House, a listed building. These grounds comprise the large Greys Mallory House and various lodge buildings, formal gardens, informal gardens, ornamental shelter belts, parkland and pasture, together with the established woodland called 'Half Moon Plantation'. The application site lies wholly within, but adjacent, to the western boundary of the Half Moon Plantation woodland. There are also various buildings associated with the recent establishment of an agricultural use towards the north-western edge of the estate. The agricultural access to the site is off Banbury Road approximately 400 metres to the south of the Europa Way/ Banbury/ Warwick Road roundabout junction.

### **Details of the Development**

The application seeks the retention of the existing pig fattening sheds in Half Moon Plantation constructed without planning permission in 2006. The application is accompanied by block plans and elevational drawings showing the block to be 17.9 metres x 11.8metres x maximum of 1.5 metres high. The materials are concrete block walls and a shallow ridge profiled sheet roof. It is served from an existing concrete farm yard by a concrete surface road adjacent to the north of the block that loops around the east side of the block, which was also built without planning permission. The original drainage tanks are both situated beyond the western edge of the wood. A new drainage tank with a concrete apron cap has been constructed adjacent to the north of the loop of the access road, within Half Moon Plantation, but is not part of the application.

The covering letter with the application referred to the Inspectorate decision letter of April 2008, granting planning permission for the fattening pens subject to conditions. However, since the parallel appeal arising from the application for the discharge of the conditions (W/08/1520) has since been withdrawn, the current application seeks a new planning permission for the unauthorised development.

The application was initially accompanied by a woodland management plan from Peter Scott Associates (the same as that provided for application W/08/1520). This was substituted by a woodland management plan prepared by Middlemarch Environmental Ltd in April 2009. In response to officer concerns about the content of the April 2009 management plan, Middlemarch submitted a revised woodland management plan dated July 2009. Broadly speaking the pertinent proposals of the July 2009 revision include details of the continuation of the use of substantial parts of the woodland for the keeping of chickens which started in 2008 and for the continuation of the use of an outdoor pig pen within the TPO



woodland adjacent to the pig fattening sheds. In terms of woodland extension and landscaping, the proposals amount to single lines of, and individual trees in 3 short rows, just outside western TPO boundary which is partly overhung by existing trees with some additional shrub planting in the central part. There are no details submitted with the application of a proposed landscaping scheme along the north-west boundary.

Following the submission of the July Middlemarch revision, officers continued with negotiations directly with the applicant's ecological adviser/ author of the report. A way forward was discussed and some informal common ground established. This involved a potential proposal of a single woodland extension of comparable size and shape as the segment which would be lost from the woodland as a result of the construction and retention of the fattening sheds and associated works. This would have involved a tear drop shaped block of woodland adjacent to the southern part of the western boundary. However, the applicant has decided not to adopt this potential compromise solution.

The applicant's planning agent has asserted that such proposals are too onerous in the context of the reasoning of the Inspector's decision. It is stated that it would be relatively quick and inexpensive to remove the fattening sheds and the Council would lose control over the management of the woodland (save for the existing control over cutting down, uprooting, topping and wilful damage to the trees by reason of the woodland TPO). It is argued that the proposed tree planting up to the 'hardstanding' is all that is required by reason of the wording in the condition imposed by the inspector. Also, the applicant has signalled an intention to appeal and apply for costs and requests that the matter be considered by the planning committee.

## **Assessment**

The main issue is whether the development together with the associated proposed mitigation package causes unacceptable harm to the landscape, ecology and heritage assets of the Half Moon plantation TPO woodland and therefore the Greys Mallory country house mini estate in which it is located.

This is a fresh application rather than a discharge of condition of an existing permission and accordingly the Council is entitled make a fresh judgement on the merits of the development. Since the conditions of the Inspectorate permission to remove the development if the timetable for submission of schemes has not been met, the application development remains unauthorised. Having said that, the fact that the Inspectorate granted a permission subject to conditions for the application proposals in the past together with the reasoning of this decision, is a significant material consideration to be weighed in the assessment of the application along with any material changes in circumstances since this decision. Therefore the Inspector's decision is produced in full as an appendix to this report.

Whilst the Inspector's reasons for his conclusions and the resultant conditions were relatively detailed, following liaison with the Council's legal advisers, it is considered that the Inspector's reasoning indicates that the proposed woodland extension and woodland management plan need to result in an overall positive effect on the woodland to compensate for the loss of woodland resulting from the construction and retention of the fattening sheds in the woodland. If the effect of the development had been relatively minor there would have been no need for the Inspector to have imposed such a comprehensive landscaping, ecological and woodland management condition. The fact that it was imposed means that without it the development was not acceptable.

The phraseology of the woodland extension part condition 2 is in particular open to interpretation. It talks of a woodland extension along the western boundary of the Half Moon Plantation up to the hardstandings (plural) which aren't defined. As a matter of fact, the western boundary of the woodland could reasonably be construed as stretching from the pond/lake in the south-west corner to the vehicular access track along the north-west boundary of the woodland. Also, there are a number of hardstandings associated with the farm buildings including one forming a corridor to the south-east side of the barn (the subject of an extant enforcement notice) which would provide access to other proposed farm developments of which the manure heap enclosure had approval at the time of the inspectorate's decision - (application W07/0326). In any event, the application is not one to discharge this condition.

There have also been a number of changes in circumstances since the decision which necessitates meaningful supplementary planting and a woodland management plan which provides an overall benefit to compensate for the loss of the segment on the edge of the woodland. The changes in circumstances include the following:

- The owner has constructed an additional concrete apron which channels dirty water running down the fattening pen service road to an underground tank beneath it. This is situated in an adjacent part of the Half Moon Plantation adjacent to the loop in the service road for the fattening pens. This has resulted in a further small area of woodland being eroded.
- The evidence of the owner, provided to the February 2008 inquiry of pre-existing hard standings on which the fattening sheds have been built has since been contradicted by evidence from the previous owner that no such 'zip slide' landing hard surfaces existed. The Inspector was not able to take this evidence into account at the February 2008 Inquiry, since it emerged after the Inquiry closed. The evidence of absence of pre 1998 hard standings sits comfortably with a witness statement from the former application case officer that there were no hard standings associated with the make shift pig enclosures that were situated broadly within this part of the woodland when he visited the site in 2004. Furthermore, the evidence of the Councils Green Infrastructure Manager that the predicted tree damage has and will continue to materialise is indicative that the fattening sheds were probably built on broadly undisturbed woodland ground rather than previous disturbed ground. It is apparent from paragraph 22 of the Inspector's decision that whether or not the ground had previously been disturbed was a small factor in the Inspector's judgement.
- The application site along with the other parts of the Greys Mallory estate have been designated as a locally registered historic park and garden in recognition of its qualities as an Edwardian mini estate in October 2008, after the date of the decision. The evaluation of the grounds specifically mentions Half Moon Plantation being incorporated within the pleasure grounds of the house at an early date and indicates that the house was positioned to take advantage of the shelter provided by the woodland. The assessment refers to the southern end of the woodland merged into a woodland garden and mentions walks through the woodland to the original pond in the southwest corner. Whilst the site is currently not readily seen from public vantage points or Greys Mallory house and gardens, particularly in summer, by reason of the depth of woodland and changes in levels, the Planning Policy Statement No.5, and associated Good Practice Guide published in March 2010 indicates that the "setting" of heritage assets includes spatial connotations and historical connections.
- Finally, since the appeal decision, substantial tracts of Half Moon Plantation have started to be used for intensive chicken rearing. Also, the remaining rudimentary pig enclosure which the pig fattening sheds were meant to

replace, has been retained as a pig holding area, used for the keeping of pigs whilst the fattening sheds are cleaned out. Neither agricultural use was apparent at the time of the February 2008 Inquiry or during the subsequent Inspectors site visit. Certainly, neither of agricultural uses were mentioned in the Inspector's decision letter. The Middlemarch Management report highlights the harm caused by these intensive uses and proposes that substantial tracts of the Half Moon Plantation continue to be used for keeping of chickens and pigs, albeit in a controlled way. The Inspector, in concluding that a woodland management plan could mitigate the effects of the tree loss in and around the fattening pens, probably would not have envisaged proposed intensive agricultural use with the potential to cause harm to the woodland as being part of a woodland management plan. Certainly, it was not mentioned in his decision letter.

As a starting point, an analysis of the reasons for the Inspectors conclusions in the decision letter of April 2008, indicates that a management plan needs to secure an overall benefit to the woodland proportional to the loss of trees resulting from the retention of the development. It would also need to address the various aforementioned material changes in circumstances that have taken place since this decision. However, given the siting of the development within the TPO woodland which itself is an integral component of the registered historic park and garden, a commensurate woodland, landscape and ecological compensation package is considered necessary.

In general terms, whilst the revised Middle march package represents an improvement on previous management plans, there are considered to be significant shortcomings in a number of respects, relating to

- the quantity and quality of the woodland extension
- continued vagueness about stocking levels for the keeping of chickens and pigs in parts of the woodland and measures to prevent overgrazing
- the details of the proposed tree planting

Overall, it is considered the Middlemarch Management plan does not compensate proportionally for the actual and potential tree loss in and around the fattening pens which officers consider will result in a significant segment being lost in the canopy at the edge of the woodland. In this context, there would be little overall benefit from woodland management to compensate for the loss of woodland from the fattening pens segment.

### **Summary conclusions**

The landscape and heritage value of this woodland, as a hillside woodland, which is prominent in the Feldon Parkland landscape is recognised by it enjoying some protection by reason of the woodland TPO. It is also an integral component of the locally registered historic park and garden associated with the listed Greys Mallory House. Planning Policy Statement no. 5 'Planning for the Historic Environment and the associated Historic Environment Planning Practice Guide updates planning policy bringing an integrated holistic approach relating to the historic environments and heritage assets which are positively identified as having a degree of significance. The latter includes parks and gardens and significant landscape features e.g. TPO woodlands. Policy HE 8 within the PPS states that the effect of an application on the significance of a heritage asset or its setting is a material consideration. Policy HE10 states that where applications affect the setting of designated heritage assets e.g a listed building, they should be refused unless it can be demonstrated that harm is outweighed by the benefits. Setting is now clearly defined to include the surroundings in which a heritage asset is experienced and includes not only visual but spatial associations and historic connections.

The fact that there are limited visual links between the application site and public vantage points or from the Greys Mallory house and gardens does not diminish the significance of the loss of part of the woodland. In accordance with policy HE10, there needs to be a commensurate compensatory benefit. There is a consensus amongst all the consultees that the only meaningful way in which compensatory tree planting can take place and can be sustained is a single block of the same size and similar shape to the segment of woodland that would effectively be lost due to the construction and retention of the fattening sheds. The most obvious way this can be achieved is by a woodland extension close to the south western corner of Half Moon Plantation. Whilst this has been discussed and tentative common ground established with the applicants ecological advisers, the agent has now stated that the applicant will not amend the mitigation package for the application in this respect.

The retention of the fattening pens within Half Moon Plantation, by reason of siting and in the absence of an effective woodland extension, woodland management plan and landscaping, are thereby considered to unacceptably harm this TPO woodland. It would thereby also unacceptably harm a locally registered historic park and garden in which it is set which forms the setting of Greys Mallory House listed building which are distinctive heritage assets within the Feldon Parkland landscape type. For these reasons, it would thereby conflict with the aforementioned planning policies.

Since the refusal of the application would not remedy the harm, it is necessary to take enforcement action. This would need to secure the careful removal of the fattening sheds, the service road, and the recently constructed concrete apron/drainage tank not the subject of the application. Since some trees have been damaged and in some cases lost, it is also necessary to secure appropriate replanting within the remaining gaps. Given the lapse of time since the original authority given by the March 2007 planning committee to take enforcement action to remedy the breach, it is appropriate to seek new authority to achieve these objectives.

### **RECOMMENDATION:**

1. REFUSE for the reason set out below
- 2 Enforcement Action to be taken to secure the removal of the pig fattening sheds, service road and concrete apron/drainage tank and to require appropriate replanting on the site.

### **REFUSAL REASONS**

The development, by reason of siting and in the absence of an effective woodland extension, woodland management and landscaping, would unacceptably harm the Half Moon plantation woodland, the landscape and heritage qualities of which are recognised by its protection as a woodland Tree Preservation Order and as an integral component of the locally registered historic park and garden. It would thereby unacceptably harm the locally registered historic park and garden in which it is set, which forms the setting of Greys Mallory house listed building all of which are distinctive heritage assets within the Feldon Parkland landscape type. It would thereby conflict with Warwick District Local Plan policies DP3, including parts a), c) and f), DAP 11, and DAP4 (relating to setting) together with the Warwickshire Landscape Guidelines SPG.

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