



Appeal Decisions

Hearing held on 21 May 2013

Site visit made on 21 May 2013

by A R Hammond MA MSc CEng MIET MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 June 2013

Appeal A Ref: APP/H0738/C/13/2190861

Land at High Farm, Redmarshall Road, Redmarshall, Stockton on Tees, TS21 1EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Paul Baker against an enforcement notice issued by Stockton-on-Tees Borough Council.
 - The Council's reference is 9/0016/EWKS.
 - The notice was issued on 13 December 2012.
 - The breach of planning control as alleged in the notice is the erection of an extension to an existing building for the storage of corn without planning permission.
 - The requirements of the notice are
 - (i) Remove the unauthorised extension to the existing agricultural building (above ground level only) being all that part of the structure within the land edged red on Plan B in compliance with the method statement and risk assessment attached to the notice at Appendix 1 & 2 respectively.
 - (ii) Remove from the land all the resulting debris/materials associated with the removal of the unauthorised extension to the existing agricultural building in compliance with the attached method statement and risk assessment.
 - (iii) The resulting debris/materials associated with the removal of the unauthorised extension to the existing agricultural building are to be either stored away from the land or disposed of at an approved site for disposal.
 - The period for compliance with the requirements is 5 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/H0738/A/13/2190787

High Farm, Redmarshall, Stockton on Tees, TS21 1EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Baker against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 12/2070/FUL, dated 28 August 2012, was refused by notice dated 4 December 2012.
 - The development proposed is an agricultural building.
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Decision Appeal A

1. The enforcement notice is corrected: by the deletion of the words "for the storage of corn" from the breach of planning control as alleged; by the deletion of the words "(above ground level only)" from requirement (i) and the

substitution of the words "(above concrete base level only)"; by the deletion of the words "in compliance with the method statement and risk assessment attached to the notice at Appendix 1 & 2 respectively" from requirement (i) and the substitution of the words ", the local planning authority having been given 3 weeks notice of the date of commencement of the works"; the deletion of the words "in compliance with the attached method statement and risk assessment" from requirement (ii); and the deletion of requirement (iii). Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the extension to an existing building on the land shown edged red on the plan annexed to this decision.

Decision Appeal B

2. The appeal is allowed and planning permission is granted for an agricultural building at High Farm, Redmarshall, Stockton on Tees, TS21 1EU in accordance with the terms of the application, Ref 12/2070/FUL, dated 28 August 2012, and the plans submitted with it.

Application for costs

3. At the Hearing an application for costs was made by Mr Paul Baker against Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

The Enforcement Notice

4. The Council's reason for issuing the Enforcement Notice is that the development is located on an unsuitable site for built development as the development is located within too close proximity of one 42" and one 36" high pressure water mains. The mains are owned and operated by Northumbrian Water Limited (NWL).
5. The Enforcement Notice requires works to be done "in compliance with the method statement and risk assessment attached to the notice at Appendix 1 & 2 respectively". The Council contended that an Enforcement Notice could incorporate attachments but was not able to fully justify that contention.
6. Section 173(3) and (4) of the Act state that an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes. Those purposes are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.
7. In *Miller-Mead v MHLG* [1963] 1 A11 ER 459, Lord Justice Upjohn said that the test in deciding whether an enforcement notice satisfied the statutory requirement must be "Does the notice tell him fairly what he has done wrong and what he must do to remedy it".
8. Whether or not the Enforcement Notice can require adherence to appended documents, the method statement and risk assessment are defective in a

number of matters. Primarily the method statement requires approval of certain matters including arrangements for the isolation of services to the structure marked for dismantling and the location of a stockpile area. The method statement and risk assessment also contain a number of vague and imprecise requirements and at least one significant typing error.

9. The Enforcement Notice, as drafted, is therefore defective in that it does not comply with section 173 of the Act. Even if the powers to vary or correct a notice conferred by the Act extend to correction of an attachment, the defects are extensive and at least some, particularly those requiring some form of future agreement or approval, are incapable of correction.
10. Nevertheless, at the Hearing, it was confirmed by the Council and NWL that the appendices had been included so as to ensure that works would be carried out in a safe manner and so as to not risk damage to the water mains. Although NWL had declined to supply details of the easement for the water mains, claiming that they were commercially sensitive, they confirmed that adherence to the terms contained therein, together with any associated restrictive covenants, would ensure that any works would not cause undue risk of damage to the mains provided that NWL had a presence on site during any dismantling of the barn. It was also confirmed that the reference "above ground level" in requirement (i) of the notice reflected an intention to under enforce so as to remove any potential for consequential damage resulting from removal of below ground steelwork and the concrete base. Furthermore it was acknowledged that the appellant himself would be bound by health and safety legislation and would need to produce his own risk assessment.
11. The requirements of the Enforcement Notice are to remedy the breach of planning control, namely the erection of the extension, and this could be achieved, in a manner which meets the expressed concerns of NWL as to the potential for consequential damage to the water mains, by the removal of the building above concrete base level.
12. It was therefore agreed by all parties that neither the appellant nor the Council, on behalf of NWL, would be caused injustice if the notice were to be corrected by reference to "above concrete base level" as opposed to "above ground level", by the deletion of all reference to the appendices and the addition of a clause requiring that the Council be given 3 weeks notice of commencement of works in order that NWL could be informed. It was further agreed that no injustice would be caused by the correction of the notice by the deletion of requirement (iii) which merely repeats requirement (ii).

Appeal A ground (b)

13. Under ground (b) the appellant pleads that the breach of planning control as alleged in the Enforcement Notice has not occurred as a matter of fact in that the extension to the existing building is used for livestock and not for the storage of corn.
14. The wording of the alleged breach is ambiguous in that "the storage of corn" could potentially refer to the existing barn or the extension or indeed that it is the storage of corn which requires planning permission. Nevertheless the appellant acknowledges that it is the extension which required planning permission and that it is clear which building is attacked by the notice. No

injustice would be caused by the deletion of the words “for the storage of corn” from the breach as alleged and the ground (b) appeal fails.

Appeal A ground (a) and Appeal B

Main Issue

15. The main issue in these appeals is whether the development presents a safety risk to persons or property in the event of a burst water main and/or prejudice access for maintenance and other operations with the potential to affect water supplies within the Teesside area.

Reasons

16. The appellant accepted that the proximity of the development to the two water mains could be a material planning consideration if the risks claimed in the reasons for issuing the Enforcement Notice and in the reasons for refusal of planning permission could be substantiated.
17. NWL objected to the application for planning permission on the basis of a perceived threat to the integrity of water supplies to a substantial part of Teesside. The Council was justified in accepting that contention from a statutory consultee and the potential of a major impact on water supplies is a material planning consideration in this instance.
18. At the hearing NWL confirmed that there was no routine maintenance of the mains. Furthermore, NWL accepted that catastrophic failures of high pressure water mains are rare and that the likelihood of one occurring adjacent to the barn is extremely remote. In addition, NWL confirmed that, elsewhere, significant lengths of high pressure water mains are located under public highways where any risk to persons or property in the event of a burst is clearly considered acceptable. It follows that the much lower likelihood of a catastrophic failure on the limited length of main adjacent to the barn poses a lower risk than that considered acceptable elsewhere.
19. Given that the probability of a catastrophic failure is very remote and that any risk to persons or property is acceptably low, and that there is no routine maintenance of the mains, it follows that any realistic concerns relate to potential large leaks or to smaller leaks which may go unidentified for a period of time leading to the creation of underground voids. NWL expressed concern that the presence of the barn in close proximity to the mains would frustrate access in the event of dealing with such events as a substantial trench with clearance to the side of the main would need to be constructed using large plant.
20. However, NWL confirmed that, in general, a main would not be shut down immediately in the event of the identification of a leak, so as to maintain supply. The barn extension is constructed of lightweight cladding on a steel frame which, in the event that it should prove necessary, could be dismantled quickly to facilitate access, the appellant considering that 1½ days would be sufficient time to dismantle the entire structure.
21. Whilst the possibility of the creation of voids beneath the concrete slab of the barn extension, and that in the feedway to the front of it, was of concern to NWL this can be no different to the possibility of similar occurrences where

mains pass under public highways and, indeed, NWL confirmed that the concrete slab serves to protect the mains beneath it.

22. Therefore, the possibility of a catastrophic failure of one or both mains is so remote as to not pose a significant risk. Whilst the presence of the barn extension might inconvenience NWL in the event of a leak, it would not significantly prejudice or frustrate access sufficiently to justify refusal of planning permission.
23. For the reasons given above, and taking account of all material planning issues raised, I conclude that Appeal A should be allowed on ground (a) and that Appeal B should be allowed.

Appeal A ground (f)

24. As the appeal is allowed on ground (a) it is not necessary to consider the appeal on ground (f).

Andrew Hammond
INSPECTOR



Plan

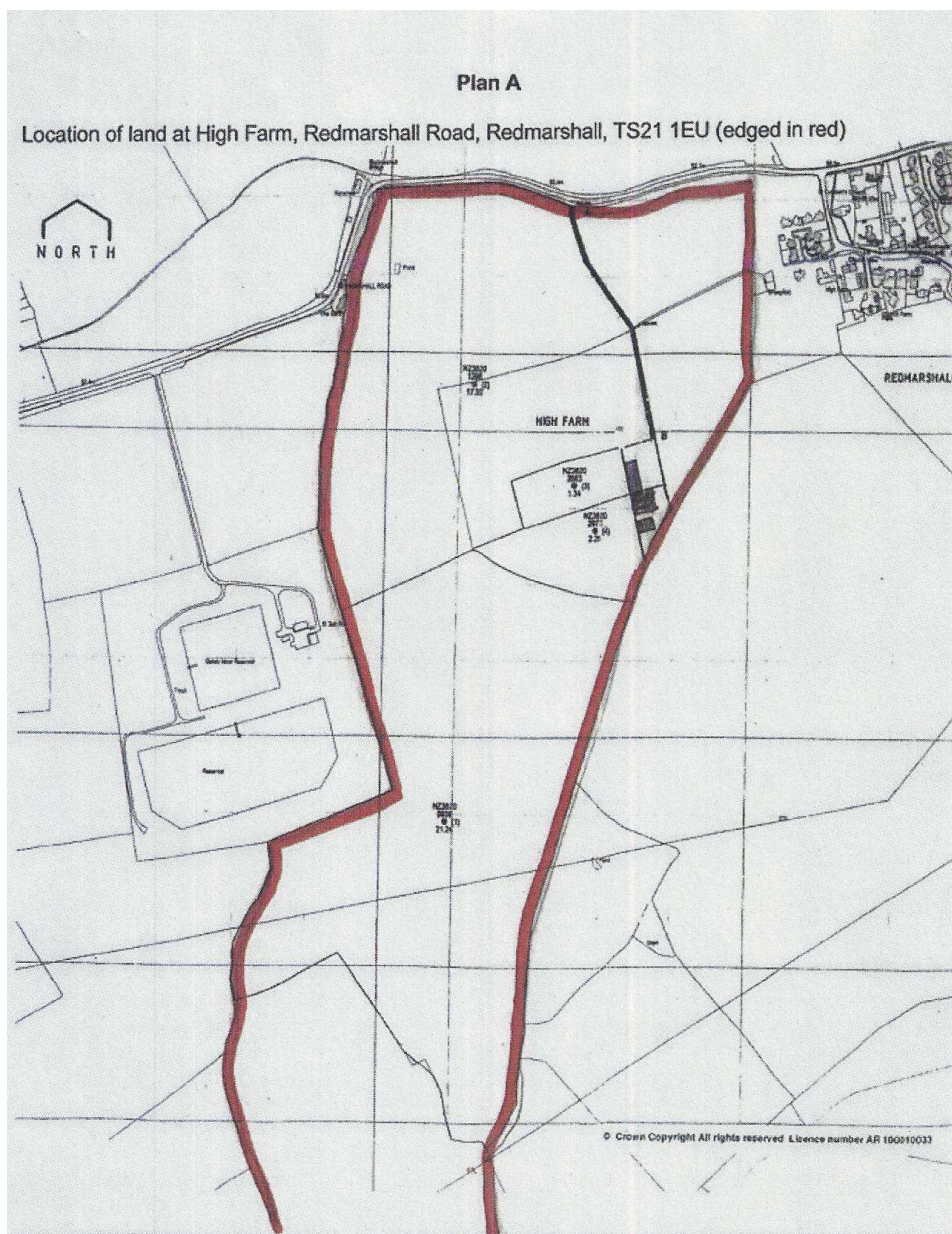
This is the plan referred to in my decision dated: 12.06.2013

by A R Hammond MA MSc CEng MIET MRTPI

Land at: High Farm, Redmarshall Road, Redmarshall, Stockton on Tees, TS21 1EU

Reference: APP//H0738/C/13/2190861

Scale:NTS



APPEARANCES

FOR THE APPELLANT:

Dr Malcolm Bell
Mr Philip Barber
Mr Paul Baker

FOR THE LOCAL PLANNING AUTHORITY:

Mr Daniel James Planning Services, Stockton on Tees Borough
Council

INTERESTED PERSONS:

Mr Christopher Doyle Northumbrian Water Ltd
Mr Antony David Bates Northumbrian Water Ltd

DOCUMENTS

- 1 Advance notification of application for costs, provided by the appellant
- 2 Response to Inspector's advance requests for clarification, provided by the appellant.
- 3 Letter of notification of arrangements for the Hearing, provided by the Council.