

ASHAMPSTEAD 11/00465 Enf	Linden House, Burnt Hill, Yattendon	New single building	Enforcement	Dismissed 16.1.14
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### **Preliminary matters**

The heading of the notice is “Operational Development” and this is described in paragraph 3 of the notice as the erection of a single-storey building. However, the description of the breach of planning control goes on to state “capable of residential occupation”. The words “capable of” do not describe a breach of planning control and the Inspector therefore corrected the notice by deleting “capable of residential occupation” from both the alleged breach of planning control and the requirements of the notice. He was satisfied that this correction can be made using the powers available under S176(1) of the Act without causing injustice to either party and he exercised his powers accordingly.

### **The appeal on ground (f)**

The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, injury to amenity. The Council has not specified in the notice which of these two purposes (as set out in s173(4)) it seeks to achieve in this case. However, since the notice requires the complete removal of the building, it is quite clear that the purpose is to remedy of the breach of planning control that has occurred by restoring the land to its condition before the breach took place as set out in s173(4)(a).

Given that the purpose of the notice is to remedy the breach of control that has occurred, that can only be achieved by the complete removal of the building and all associated materials as is set out in the requirements. To require that does not, therefore, exceed what is necessary and the appeal on ground (f) must fail.

The lesser steps suggested by the Appellant are to alter the building externally to give it more of an agricultural appearance and to remove the kitchen. Those steps would not remedy the breach of planning control. The breach can only be remedied in this case by restoring the land to its condition before the breach took place as set out in s173(4)(a).

### **Other matters**

The Appellant has pointed out that there was previously a building in this location. That building, however, was removed and now that it has gone it does not present a potential fall back position. Whilst the Appellant says he could have reused the original structure, he chose not do so, and that has no relevance to the determination of the current appeal.

The Inspector noted the request that a decision on this appeal be delayed pending the outcome of an application to be made to the Council to retain the building. However, he could find no reason to do so in this case, particularly as the Appellant had the opportunity to progress an appeal on ground (a), that planning permission should be granted, as part of this appeal. However, if the Council were subsequently to grant planning permission then, by virtue of s180 of the Act the notice would cease to have effect insofar as it was inconsistent with the permission granted. The Inspector took into account all other matters raised in the representations, but they did not alter or outweigh the main considerations that have led him to his decision.

### **Formal decision**

The enforcement notice is corrected by:

- i) the deletion of “capable of residential occupation” from the alleged breach of planning control in paragraph 3.
- ii) the deletion of “capable of residential occupation” from the requirements of the notice in paragraph 5.

Subject to the above correction the appeal is dismissed and the enforcement notice is upheld.

