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## Appeal Decision

Site visit made on 1 May 2025

**by Felicity Thompson BA(Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 02 July 2025**

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**Appeal Ref: APP/X5210/C/23/3331834**

**1-6 Arco Walk, Highgate Road, London NW5 1PB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Design Ventures Highgate Limited against an enforcement notice issued by the Council of the London Borough of Camden.
  - The notice was issued on 12 September 2023.
  - The breach of planning control as alleged in the notice is without planning permission: the use of units 1-6 Arco Walk, 138-140 Highgate Road as temporary sleeping accommodation.
  - The requirements of the notice are to:
    1. Cease the use of units 1-6 for temporary sleeping accommodation.
    2. Make the use of the building comply with the terms (including conditions, limitations, and agreements) of permission 2018/1528/P as 6 x 4 bedroom units.
  - The period for compliance with the requirements is one month.
  - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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### Decision

1. The enforcement notice is quashed.

### Reasons

2. Section 25(1) of the Greater London (General Powers) Acts 1973 provides that the use as temporary sleeping accommodation of any residential premises in Greater London involves a material change of use of the premises and each part of the premises so used. Section 25 only operates when an actual use as residential accommodation changes to use as temporary sleeping accommodation.
3. Planning permission was conditionally granted in July 2019 for the demolition of a petrol station and MOT centre at 138-140 Highgate Road and the erection of a three-storey terrace building to provide six four bedroomed dwellinghouses with gardens at lower ground, ground and upper ground levels together with associated landscaping, reference 2018/1528/P.
4. There appears to be no dispute that the development was built out in accordance with the approved plans and details, but the Council contended that the units have never been used as dwellinghouses but have been used from the outset as temporary sleeping accommodation.
5. As the units were not used as dwellinghouses (residential premises) following their erection, there can have been no material change of use, and the allegation is inaccurate.

6. Based on the Council's submissions, it appears that the development that has taken place is the erection of six units of temporary sleeping accommodation, in other words operational development.
7. The Council's views were sought, and they agreed that the allegation should be corrected to reflect the development which has taken place, being without planning permission, the erection of a building for use as six units of temporary sleeping accommodation.
8. As issued, the notice requires the cessation of the use for temporary sleeping accommodation and that the use of the building complies with the terms (including conditions, limitations, and agreements) of permission 2018/1528/P. In the case of the erection of a building without planning permission, the requirements would usually be to cease the unlawful use and demolish the building. Nevertheless, the Council suggested that the requirements should remain as issued, thereby under enforcing.
9. However, an enforcement notice cannot require that another use or activity takes place. Therefore, the requirement that the use of the building complies with the terms (including conditions, limitations, and agreements) of permission 2018/1528/P, essentially to occupy the units as dwellinghouses, would be excessive in the context of the alleged breach if corrected.
10. If I were to vary the notice to delete this requirement, the only requirement would be the cessation of the use for temporary sleeping accommodation. Once complied with, the operational development, being the erection of the building would have a deemed planning permission by virtue of section 173(11), but the building would have no use.
11. Section 57(4) of the Act provides a right of resumption of a past lawful use, where an enforcement notice has been issued. However, whilst there is no dispute that the units have been built out in accordance with the approved plans and details of permission 2018/1528/P, the units were never occupied as dwellinghouses, or for any other lawful purpose, and there is therefore no right of reversion under section 57(4).
12. For these reasons, planning permission would be required for the use of the building for any purpose, including as dwellinghouses.
13. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party.
14. The appellant has responded to the notice on the basis that the units (building) could revert to use as six dwellinghouses. Notwithstanding that the building could remain, had the allegation and requirements been accurate in the notice as originally issued, I cannot discount the possibility that the appellant would have chosen to make their case on additional grounds, in particular ground (a). Moreover, they may have made their case on ground (c) differently.
15. For these reasons, I do not consider that correcting the enforcement notice is possible without causing injustice. Therefore, it should be quashed as inaccurate and incapable of correction without injustice to the appellant. Since this is a case where the Council have misdescribed the alleged breach, they may be able to

issue another enforcement notice in exercise of their 'second bite' powers under section 171B(4).

### **Conclusion**

16. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
17. In these circumstances, the appeal on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act (as amended) do not fall to be considered

*Felicity Thompson*

INSPECTOR