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# Appeal Decision

Site visit made on 10 March 2020

**by P H Willows BA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 April 2020**

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**Appeal Ref: APP/D4635/C/19/3236928**

**Land at 1-29 Glen Court, Wolverhampton WV3 9JW**

- 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 Charles Ward against an enforcement notice issued by Wolverhampton City Council.
  - The enforcement notice was issued on 30 August 2019 and the accompanying letter was referenced 19/00023/ENCOMP.
  - The breach of planning control as alleged in the notice is, without planning permission, the making of a material change of use of a communal landscaped open space and the erection of boundary treatments to enclose the land as private gardens.
  - The requirements of the notice are:
    1. Remove any and all fencing within the hatched area shown on the plan attached to the notice apart from those which are established rear garden fences. For the avoidance of doubt, the established rear garden fences are those along the green line on the plan.
    2. Remove from the land any materials arising from 1 either to a lawful place of disposal or, if they are to be sold on as fencing, from the land within the limit set by the notice.
    3. Return to and maintain the land in its pre development condition as communal open space.
  - The period for compliance with the requirements is 2 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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## Decision

1. The enforcement notice is quashed.

## Preliminary matters

2. The appeal form identifies the appeal site address as 23 Glen Court. However, the address on the notice is Land at 1-29 Glen Court. I have considered the site identified by the notice.
3. Because of the issues relating to the plan attached to the enforcement notice, as discussed below, I sought confirmation from both parties that the plan I had been supplied with (which was not numbered but which I shall refer to as 'Plan A') was the correct one. In response, the Council provided a second plan (which I shall call 'Plan B') which, it says, was the one supplied with the notice. The

appellant responded to say that Plan A was the only one attached to the enforcement notice.

4. It appears probable to me that Plan A was the plan that was attached to the notice for 3 reasons. First, this is the plan that was supplied by the parties at the outset, with Plan B only appearing after my enquiry. Second, Plan A includes all of Nos 1-29 Glen Court within the red line boundary (and is thus consistent with the notice in that respect) whereas Plan B has red lines affecting only some of those properties. Third, the notice requires the removal of fences shown hatched on the plan. Yet the only area shown hatched on Plan B is the footway, outside the area targeted by the notice. Nevertheless, I have also considered below the possibility that Plan B was attached to the notice. Since my decision on the appeal would be the same in either event, it has not been necessary for me to resolve the conflicting positions regarding the plans.

### **The enforcement notice**

5. The notice makes reference to 'paragraph (1) of section 171A(1)' of the Act. There is no such paragraph. There can be no doubt that the Council actually had in mind s171A(1)(a), which refers to, 'carrying out development without the required planning permission'. Since the nature of the error is clear and does not appear to have caused any misunderstanding regarding the notice, it could be corrected without causing injustice.
6. The notice requires the removal of '*any and all fencing within the hatched area shown on the plan attached to the notice apart from those which are established rear garden fences. For the avoidance of doubt, the established rear garden fences are those along the green line on the plan*'. However, there is no green line on the plan attached to the notice (Plan A). So, whilst the notice may not be hopelessly ambiguous, it leaves room for doubt over which fences are the 'established fences' and do not need to be removed. If I were to attempt to correct the notice, there could be disagreement about which are the established fences, especially since the appellant is only one of the landowners affected. Injustice could therefore result. My decision to quash the notice, on the other hand, leaves open to the Council the option of issuing a further, corrected notice, under the provisions of s171B(4) of the Act, should it wish to do so.
7. Requirements 2 and 3 of the notice both refer to 'the land'. This might refer to the land identified at section 2 of the notice and shown edged red on the plan (Plan A). However, read in context with Requirement 1, it could also refer to the hatched area. Indeed, this is much the most likely interpretation of these requirements, since the land edged red includes the whole of the properties identified, including the dwellings themselves and the area to the front of them, as well as the area to the rear where the fencing has been erected. Requirement 3 would require all this land to be used as communal open space, which cannot have been the intention. Consequently, these Requirements, and Requirement 3 in particular, must relate to the hatched area. Nevertheless, the wording creates a degree of ambiguity.
8. Requirement 2 also includes an unclear reference to '*the limit set by the notice*'. It appears to me that this is likely to be an unnecessary reference to the time limit set out at section 6 of the notice. Had these points relating to Requirements 2 and 3 been the only flaws in the notice, it may have been possible to correct them without injustice, subject to the views of the parties.

9. I have considered the possibility that Plan B was, in fact, the plan attached to the notice, but the position regarding the fences to be removed would still be unclear. The only hatched area on Plan B is the footway (labelled 'pavement' on the plan). This is outside any red line shown on the plan and is clearly not the area targeted by the notice. For this reason alone, the requirements of the notice, insofar as they relate specifically to 'the hatched area shown on the plan', would not be clear. The plan is annotated to indicate which fences should be removed, but this is not consistent with what the notice actually says about removing fencing from the hatched area. The lack of certainty on this point means that it would not be possible to correct the notice without risk of causing injustice.
10. For the reasons set out above, regardless of which plan was attached to the enforcement notice, not all of the deficiencies in the notice can be corrected in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused where I to do so. Consequently, the enforcement notice is invalid and will be quashed. In these circumstances, the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

*Peter Willows*

INSPECTOR