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## Appeal Decisions

Site visit made on 12 April 2021

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

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

**Decision date: 5 May 2021**

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### **Appeal A: APP/D4635/C/20/3261282**

#### **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 17 August 2020.
  - 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.
    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.
    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.
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### **Appeal B: APP/D4635/C/20/3261330**

#### **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 Gordan Clarke against an enforcement notice issued by Wolverhampton City Council.
  - The enforcement notice was issued on 17 August 2020.
  - 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.
    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.
    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) (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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## Decisions

1. The enforcement notice is quashed.

## Preliminary Matters

2. In Appeal A the appeal form identifies the appeal site address as 23 Glen Court and in Appeal B it is identified as 3 Glen Court. However, the address on the notice is Land at 1-29 Glen Court. I have considered the site identified by the notice.

## The Enforcement Notice

3. 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*'. However, as set out in the previous Inspector's decision<sup>1</sup>, when considering the number of fences within the hatched area and their different positions, it is not clear from the notice and plan, as to which fences are the 'established fences' and do not need to be removed. Since the appellants are not the only landowners which are affected by the notice, if I were to try and correct it, there could be disagreement about which are the established fences. Injustice could therefore result.
4. Furthermore, 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 attached to it. However, there are two red lines on the plan, one around the hatched area, but also one which encompasses the whole the properties identified including the dwellings themselves, the area in front of them, as well as the area to the rear. Requirement 3 would require all this land to be used as communal open space, which cannot have been the intention. Consequently, these requirements, and in particular Requirement 3, must relate to the hatched area. Nevertheless, the wording and plan creates a degree of ambiguity.
5. For the reasons set out above, 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 were I to do so. Consequently, the enforcement notice is invalid and will be quashed. In these circumstances, the appeals under the various grounds as set out in section 174 (2) of the 1990 Act, as amended, do not fall to be considered. My decision to quash the notice does not prevent the Council of the option of issuing a further corrected notice, under the provisions of s171B (4) of the Act, should it wish to do so.

*Elizabeth Pleasant*

INSPECTOR

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<sup>1</sup> APP/D4635/C/19/3236928