Planning Inspectorate

# Appeal Decision

Site visit made on 15 September 2026

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

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

**Decision date: 15th October 2026**

**Appeal Ref: APP/T2215/C/24/3356874**
**Land at 17 Kingfisher Drive, Greenhithe, Kent DA9 9RS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Oquie David Nnachetam against an enforcement notice issued by Dartford Borough Council.
- The notice was issued on 11 November 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of land to residential use as part of 17 Kingfisher Drive, Greenhithe, Kent, DA9 9RS.
- The requirements of the notice are to:
  1. To remove the boundary wall which facilities the use of the land for residential purposes.
  2. To remove from the land all waste, materials and debris as a result of requirement 1.
  3. Do not use the land for residential purposes.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) of the Town and Country Planning Act 1990 (as amended).

## Decision

1. The appeal is allowed and the enforcement notice is quashed.

## Preliminary Matters

2. The appeal was made on ground (f) only. However, it was clear from the appeal submissions that the appellant believes that the alleged breach of planning control has not occurred as a matter of fact. There is thus a hidden ground (b) appeal. The local planning authority (LPA) have subsequently had an opportunity to respond to the appellant's ground (b) case and I have had regard to both parties' submissions in my determination of the appeal.

## Appeal on ground (b)

3. The issue in a ground (b) appeal is whether the breach of planning control alleged in the enforcement notice (EN) has occurred as a matter of fact. The burden of proof falls on the appellant to make out their case.

4. It is the appellant's case that the Land has always been in residential use as part of his property, 17 Kingfisher Drive. He states that the Land is in his ownership, is not public amenity land, and it is his responsibility to maintain the appearance of the Land, including removing litter from it. During 2022 the appellant enclosed the Land by rebuilding his garden wall and incorporating part of the Land within his private rear garden. He states that he undertook those works to stop the general public from littering on his Land and for security. It is his case that the strip of shrub planting has always been in residential use and forms part of the residential planning unit of 17 Kingfisher Drive. Although some of this argument might be

more relevant to an appeal on ground (c), that the matters do not constitute a breach of planning control, I have considered all of the evidence and made a determination on ground (b) as appealed.

5. The LPA do not dispute that the appellant owns the Land but believe the Land to be amenity land and not part of the appellant's garden. It is their case that having regard to the approved landscaping/planting plan which accompanied the planning permission for the original housing estate, this Land was intended to be a vegetative strip which would contribute to the appearance of the street scene. The previous location of the boundary wall defined the extent of the appellant's garden and thus enclosing the Land with the new boundary wall has materially changed its use from amenity land to residential use.

6. 17 Kingfisher Drive is a three-storey end terraced house. The property's gable wall fronts Kingfisher Drive and prior to the enclosure of the Land there was a small strip of shrub planting abutting the gable of the property and the adjoining garden wall. This strip of planting was separated from the carriageway by a narrow strip of paving and timber bollards. The timber bollards have been removed and the garden wall has been re-constructed along their former alignment to partially enclose the Land within No17's private garden and provide a new entrance gate.

7. I understand that planning permission was granted for the appeal property in 2000 as part of a grant of full planning permission for a residential development comprising 201 dwellings, associated car parking, landscaping and highway works[1]. The LPA has not provided me with any evidence that the Land the subject of this appeal has been adopted as public open space and nor that it should be maintained as part of a conditioned landscaping scheme.

8. From the evidence before me, including photographs provided by the LPA taken from Google Street View[2], prior to the alleged development taking place, the Land comprised a narrow strip of shrub planting abutting the gable wall of 17 Kingfisher Drive and its rear garden. This Land was also used to store the appellant's waste/recycling bins and is still used for that purpose. The Land is physically related to No17, within the ownership of and maintained by the occupiers of No17. Considering its location, small size, appearance and character, from the evidence before me and on the balance of probability, the Land's function and use was ancillary to the residential use of No17 Kingfisher Drive. The works undertaken on the Land, including removing the planting and partially enclosing it, has not materially changed its ancillary residential use and the Land remains in the same residential planning unit as No17.

9. I conclude that there has not been a material change in the use of the Land to residential use. Prior to the works undertaken to remove the planting and reconstruct a new boundary wall, the Land was in residential use ancillary to the use of 17 Kingfisher Drive. A material change of use to residential use has not occurred and the appeal on ground (b) succeeds.

[1] LPA Ref: 99/00749/FUL
[2] Appendix B, LPA Statement of Case.

## Conclusion

10. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

11. In these circumstances, the appeal on ground (f) does not fall to be considered.

*Elizabeth Pleasant*

INSPECTOR