

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

**Application No :** 13/03073/ELUD

**Ward:**  
Copers Cope

**Address :** North Dene Beckenham Place Park  
Beckenham BR3 5BS

**OS Grid Ref:** E: 537871 N: 170346

**Applicant :** Mr G Kiourkzids

**Objections :** YES

**Description of Development:**

Conversion and use as 5 self - contained flats  
CERTIFICATE OF LAWFULNESS FOR AN EXISTING DEVELOPMENT

**Key designations:**

Conservation Area: Beckenham Place Park  
Area of Special Residential Character  
Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
London City Airport Safeguarding Birds

**Proposal**

This application seeks to establish the lawful use of the property as five self-contained flats.

**Location**

The site is a detached, imposing period building located within Beckenham Place Park Conservation Area and to the north side of Beckenham Place Park. It is set within a generous plot surrounded by a mature, and in places somewhat overgrown, landscape.

**Comments from Local Residents**

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

- lived in Beckenham Place Park for 35+ years and have never seen the house developed into flats.
- gates have been chained up for more than 3 years
- North Dene has been derelict and empty for more than 10 years

- voters register shows no evidence of occupation for many years
- been into house once about 21 years ago and once about 4/5 years ago after a burglary. The property was the same layout both times - believe that it was originally 6 flats but cannot confirm this - the property was definitely partitioned off on the ground floor with a flat either side and a long corridor from the front door to the rear staircase; believe each floor was converted into a flat either side
- North Dene has been unoccupied and effectively abandoned for the past decade or more, and therefore has not been used, or 'operated', in this way in the past 4 years, continuously or at all
- it is understood a few years ago the property was raided by thieves without raising alarm; this would have been impossible had the house been occupied, particularly as 5 self-contained flats
- North Dene does not seem to have been used as self-contained flats since 1981 or thereabouts - 1970s electoral register records various voters in up to 5 separately identified flats; none are recorded between 1982 and 1987 or after 2002. Latter entries listings are simply against North Dene and not listed as individual separate flats.
- owner has always subscribed to the local amenity society's road maintenance fund as a single household
- number of residents observed over time and those publicly recorded are too few to 'operate' 5 self-contained flats
- insufficient documentation to support the application
- any past use as flats has long since lapsed

### **Planning Considerations**

This Lawful Development application is to be considered under Section 191 of the Town and Country Planning Act 1990.

### **Planning History**

The planning history of the site includes planning refusal for three storey block comprising 21 flats with associated parking under ref. 04/04114 (and associated Conservation Area Consent ref. 04/04115).

### **Conclusions**

The Town and Country Planning Act 1990, section 191 provides for consideration of a Certificate of Lawfulness of existing use or development if any person wishes to ascertain whether any existing use of buildings or other land is lawful.

For the purposes of the Act uses and operations are lawful at any time if:

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);

If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of

the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

To assess the Lawfulness of the use applied for the supporting documentation, local comments received and any other evidence must be carefully considered.

As part of the supporting documentation copies of the following documents have been submitted:

1. Memorandum of agreement - for the tenancy of Flat No 4 North Dene, Beckenham Place Park, Beckenham, Kent dated 7th September 1934, from Mrs E M Hare and F B E Hare, Esq to G M Tchoudakoff, Esq
2. Copy of conveyance between The National Trust for Places of Historic Interest or Natural Beauty and G Kiourtzideis Esq - dated 11th January 1984;
3. Extract from The London Gazette, 31st May 1968 indicating an address of '5 North Dene...'
4. Extract from the London Gazette, 18th October 1979 indicating an address of 'Flat 5, North Dene...'
5. Extract from The London Gazette, 20th March 1953 indicating an address of '1, North Dene...'
6. Extract from The London Gazette, 24th June 1947 indicating an address of 'Flat no. 4, North Dene...'
7. Photos have been submitted to show individual entrance doors, door knockers and some original flat numbers. Also adjacent to the main entrance door to the front there are five bell points (photo available). Plans to show the floor layouts have been submitted.

The application form section 9 states the grounds for application for a Lawful Development Certificate as 'The use began more than 10 years before the date of this application' (the application form is dated 10/9/2013). In answer to further question under section 9 of the application 'Please state why a Lawful Development Certificate should be granted' it is stated 'as the use of the property has clearly been subdivided into 5 flats in accordance with the attached information approval is sought to regularise this'.

Section 10 states that 'the use begun in 1934 and that Flat 2 has been occupied in constant use since 1950s. Information on all other tenants provided with historic references which are attached.'

The site visit established access to the entire site. There was evidence of 5 bell pushes, set to the main entrance way on the front elevation of the building. An

inspection of the interior of the building revealed individually numbered front doors leading to individual units of living accommodation within the building, each with allocated kitchen and bathroom areas. The layout of the interior suggests the use of the site as flats; additionally there are two separate fire escapes to the exterior of the building, to the upper floor. Although currently disused, the overall interior layout of the building revealed the function of flatted accommodation. Relevant photos are available on file.

Local comments received in respect of the use at the site indicate it has appeared derelict and empty for many years and that the voters register for North Dene indicates it does not seem to have been used as self-contained flats since 1981 or thereabouts - 1970s electoral register records show various voters in up to 5 separately identified flats; none are recorded between 1982 and 1987 or after 2002. Latter entries listings are simply against North Dene and not listed as individual separate flats.

Local comments also state that the owner has always subscribed to the local amenity society's road maintenance fund as a single household, that insufficient documentation has been submitted to support the application and that any past use as flats has long since lapsed.

Local comments received reveal that the layout to the ground floor was the same 4/5 years ago as it was about 21 years - 'the property was definitely partitioned off on the ground floor with a flat either side and a long corridor from the front door to the rear staircase. I believe each floor was converted into a flat either side'

The Memorandum of Agreement dated 1934 refers: '... the rooms constituting Flat No.4. being the First Floor of North Dene Beckenham Place Park .... In common with the Landlords and the tenants and occupiers for the time being of the other portions of the building of which the flat forms part over the entrance hall staircases and landings for the purpose only of access to and egress from the said first floor flat....!.

The Conveyance record of 11th January 1984 refers to the property as a private dwellinghouse.

The evidence submitted shows that in 1934 there was a Flat 4; from 1968 -1979 there was a Flat 5.

Information has been submitted and the site visit has revealed evidence for the use of North Dene as flats. Information relating to latter years may indicate that the flats have not been lived in, apart from flat 2 by Mr George Kiourtzidis. Council Tax records indicate that Mr George Kiourtzidis has been liable for Council Tax from 01/04/93; Council Tax has been paid as a single dwelling based on the banding of the property.

The Council's legal team have advised that the argument for abandonment is not a sustainable contention; evidence has been submitted to show the existence of flat 4 in 1934 - it would seem that in 1947 (relevant date in that this precedes the Planning Act 1948) there is evidence for one flat (i.e. flat 4). Additionally whilst

there is some evidence to show payments for Council Tax and local road maintenance fund as a single household this does not necessarily demonstrate or provide evidence that there has been a new chapter in the planning history of the site particularly given the existing (and historical) layout of the building as flatted accommodation.

The onus of proof in an application for LDC is firmly on the applicant. Furthermore, the burden of proof is on the applicant whereby the relevant test of the submitted evidence is on 'the balance of probability'. Whilst in latter years the flats do not appear to have been inhabited, equally North Dene does not appear to have been and set up to be used as a single dwelling-house. On the evidence submitted it seems that the lawful use, more likely than not, remains for the use of the accommodation as five flats.

**RECOMMENDATION: EXISTING USE/DEVELOPMENT IS LAWFUL**

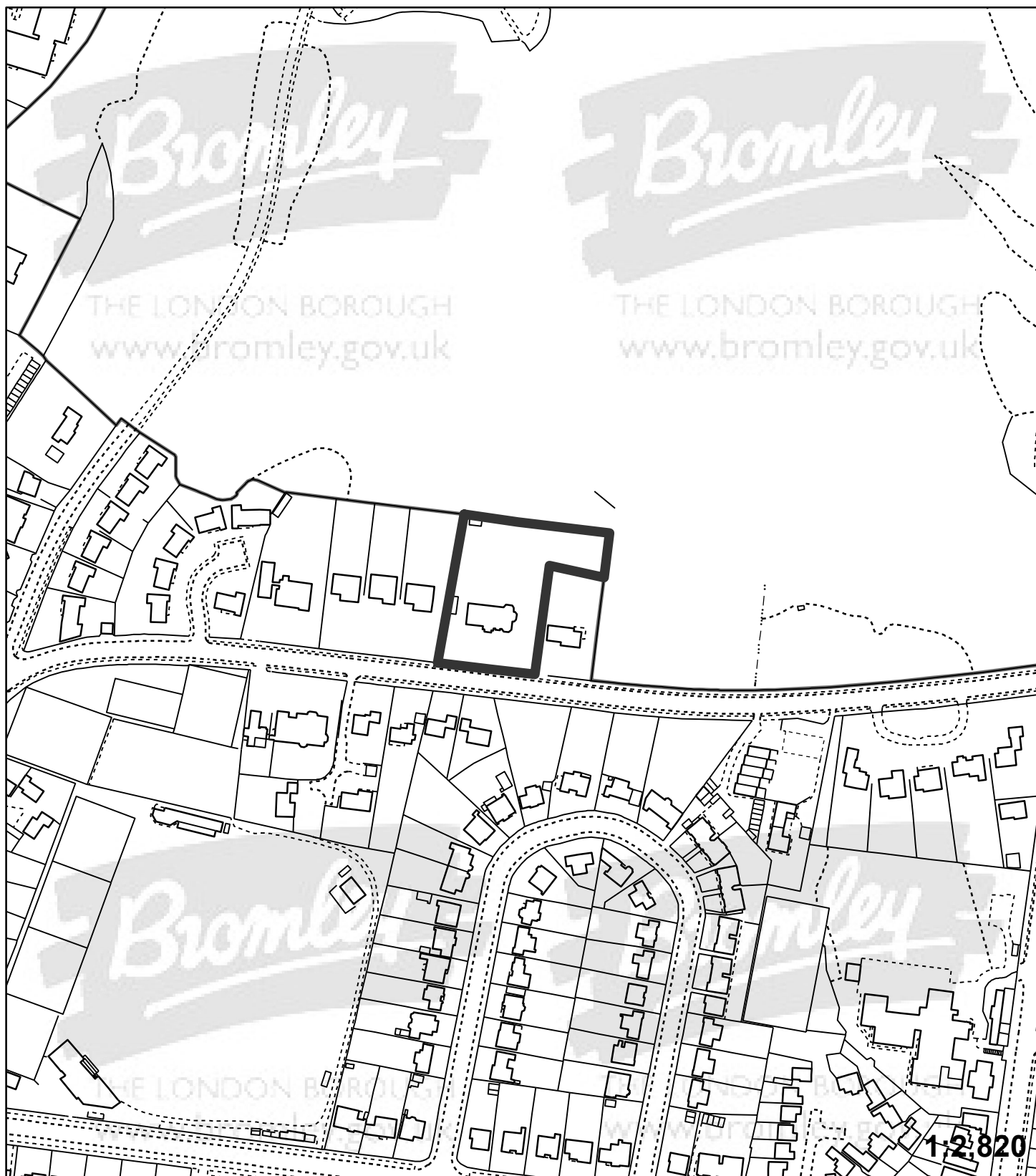
- 1 On the balance of probabilities, North Dene has been used as five self-contained flats since 1968 for a period of at least 4 years without any other subsequent use. The use of the premises as five self-contained flats, on the balance of probability, is therefore considered to be lawful.

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**CERTIFICATE OF LAWFULNESS FOR AN EXISTING DEVELOPMENT**



"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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