

SECTION '2' – Applications meriting special consideration

Application No : 14/01573/ELUD

Ward:
**Bromley Common And
Keston**

Address : 14 Cheyne Close Bromley BR2 8QA

OS Grid Ref: E: 542052 N: 165183

Applicant : Mr Nimesh Desai

Objections : YES

Description of Development:

Use of front and rear garden space, living room and exercise room for teaching martial arts classes CERTIFICATE OF LAWFULNESS FOR AN EXISTING USE

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
London City Airport Safeguarding
London Distributor Roads

Proposal

This application seeks a lawful determination for the use of the front and rear garden space, living room and 'exercise room' at No.14 Cheyne Close, Bromley for teaching martial arts. The applicant has provided evidence to substantiate the claim that the property has been used as claimed for a period of 10 or more years.

The evidence submitted comprises:

- An undated petition of 11 signatures stating that the applicants has been teaching martial arts from the address
- A letter from a neighbouring occupant stating that the applicant has been teaching from then address since 'about 1999) and teaching children since 2001 or 2002
- A letter from Mr S Patel stating that his children have been taught at the address since 2002
- A letter from Mr P Nguyen stating that his children have been taught at the address since 2003
- A series of photographs that appear to show the applicant teaching martial arts to children. These photographs are undated and make no reference to the site address

Location

Cheyne Close is small close of residential properties to the east of Oakley Road, Bromley.

Comments from Local Residents

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

- the classes have not been carried out at the property for 10 years
- an abatement order was placed on the rear garden in 2008
- the comings and goings are disruptive
- neighbouring driveways are blocked
- there is an invasion of privacy
- constant noise and disturbance
- classes are carried out on weekends as well as weekdays
- health and safety concerns
- the classes have been taught since around 2006-2007
- the classes should be taught in a hall

Comments from Consultees

From a Legal perspective, in this instance, from the information provided, it appears that the applicants has provided insufficient evidence that the use has been on-going for the period claimed.

Planning Considerations

This application for a Certificate of Lawfulness of Existing Use is made under Section 191 of the Town and Country Planning Act 1990 (as amended by The Planning and Compensation Act 1991) which provides for local planning authorities to determine whether 'on the balance of probability' the evidence submitted proves that the existing use is lawful due to subsisting continuously for ten years or more under Section 171B (3) of the Town and Country Planning Act 1990.

Planning History

There is no planning history at the site.

Conclusions

In applying for a Certificate of Lawfulness for an Existing Use, the onus of proof is on the applicant to demonstrate that, on the balance of probability, the property has been used for the activities claimed without significant interruption, for a period of 10 or more years.

Looking at the evidence provided, there appears to be the applicant, supported by 3 letters and a petition supporting his claimed use. The petition is of limited weight as it does not state how long the use has been taking place.

In opposition to the applicant, there are a number of letters from neighbours. These letters appear to indicate that there is a current use for a fairly high level of the activity claimed by the applicant, but that this level of activity has not been taking place for the requisite number of years. It appears from these letters that whilst there may have been some low level activity consistent with a use ancillary to that of the dwellinghouse (for example some lessons to family and friends children), this has now intensified considerably to a point where there are a number of classes taking place each weekend.

Members will note that there appears to have been a low level of ancillary activity which has, in recent years, intensified to the point where there appears to be a change of use to a mixed use of dwellinghouse and teaching activities.

On the evidence presented by the applicant, it is considered to be difficult to state conclusively that this change happened 10 or more years ago, and therefore, without further evidence from the applicant, the view of the Councils Legal department is that the certificate should be refused,

From a planning perspective, the evidence must show that, on the balance of probabilities, the use of the site as claimed has been carried out for a continuous period of 10 or more years. On this basis, the application is considered to provide insufficient sufficient evidence to substantiate the applicants' claim, and it is recommended that the certificate be refused.

Background papers referred to during production of this report comprise all correspondence on the file ref(s) set out in the Planning History section above, excluding exempt information.

RECOMMENDATION: THE EXISTING USE/DEVELOPMENT IS NOT LAWFUL

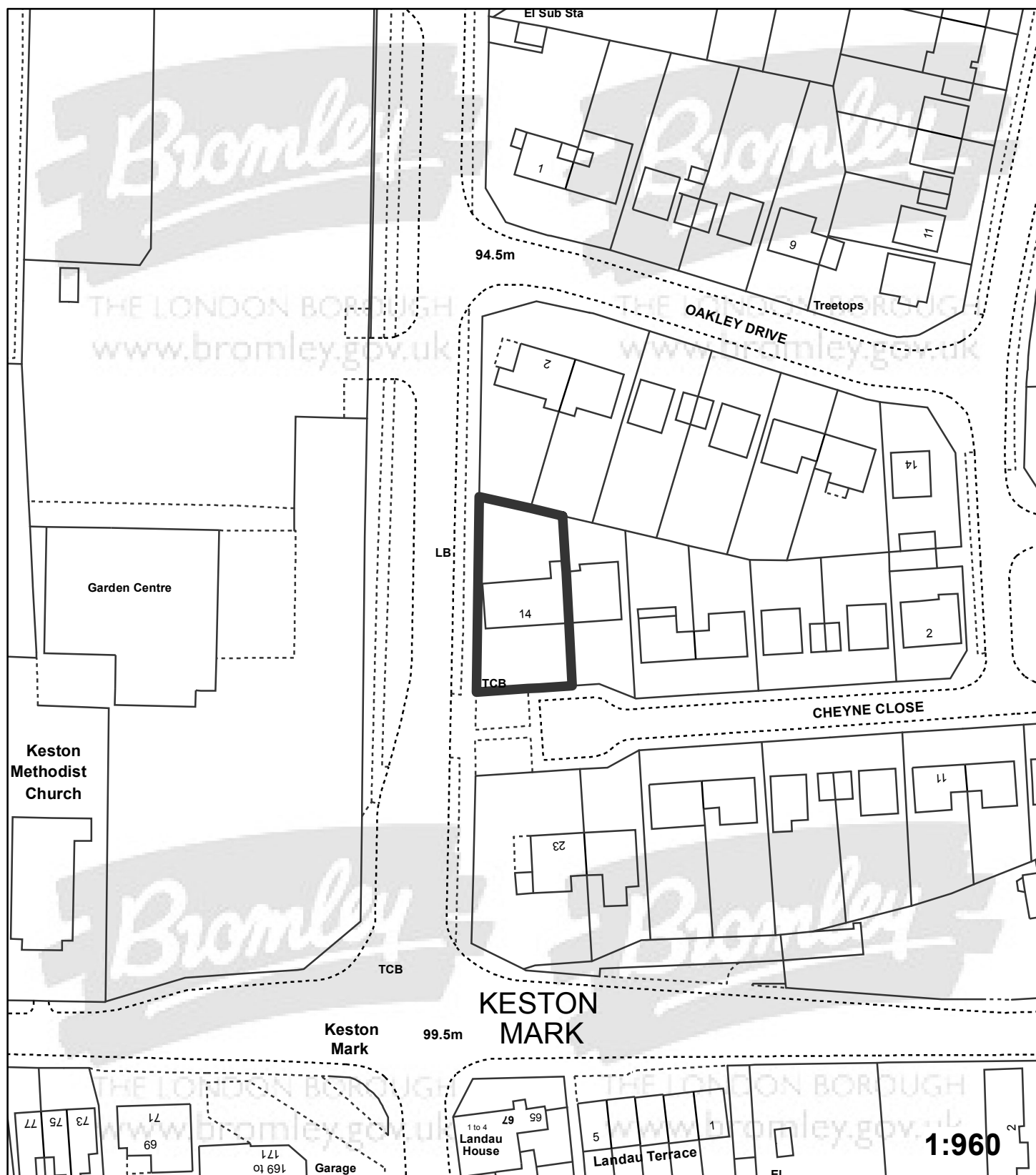
for the following reasons:

- 1 The use of part of the site for the teaching of martial arts classes has not subsisted, on the balance of probabilities, for more than ten years continuously, and as such does not constitute lawful development.

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"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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