



Appeal Decision

Site visit made on 8 September 2026

by **M Ollerenshaw BSc(Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 September 2026

Appeal Ref: APP/X5210/X/25/3372706

47 Dartmouth Park Road, London, NW5 1SU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Thibault Thevissen against the decision of the Council of the London Borough of Camden.
 - The application ref 2025/2274/P, dated 28 May 2025, was refused by notice dated 23 July 2025.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is described as 'creation of an interconnecting staircase between flats at 47 Dartmouth Park Road'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Application for Costs

2. An application for costs was made by Mr Thibault Thevissen against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

Preliminary Matters

3. Notwithstanding the description of development in the heading above which has been taken from the application form and the appeal form, the development is more fully described on the decision notice as 'installation of internal staircase and door between lower ground floor and raised ground floor levels to interconnect flats'. The Council determined the application on that basis and so have I. I have used that description in the certificate to describe the development.
4. The application was submitted under section 192 of the Town and Country Planning Act as amended (the 1990 Act) which provides for the certification of any lawful proposed use or operations. For the purposes of obtaining a certificate of lawful use or development (LDC) the onus is on the appellant to make out their case to the standard of the balance of probabilities. The planning merits of the case are not relevant.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded, having particular regard to whether the proposal would have been lawful if begun on the date of the application.

Reasons

6. The appeal site is a four storey terraced property which is currently divided into a two bedroom 'garden flat' at lower ground level and a three storey, five bedroom 'maisonette' on the floors above. Access to the maisonette is from the steps leading up to the front door and the garden flat is accessed via a staircase which descends from the front garden to lower ground level. The LDC application sought to establish whether the proposed installation of an internal staircase between the two properties, with a dual lockable door, constitutes development. If the proposal does not constitute development, the LDC should be granted confirming that the proposal would be lawful.
7. Section 55(1) of the 1990 Act defines the two limbs of development, namely operational development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. Section 55(2) provides that the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building, would not constitute development.
8. There is no dispute that the physical works proposed would be wholly internal and not affect the external appearance of the building. They would not, therefore, constitute development. However, the Council refused the application on the basis that the consequence of those works would be the amalgamation of the two units into a single dwelling and a material change of use of the building through the loss of one dwelling unit.
9. Section 55(3)(a) of the 1990 Act specifically provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building as a whole and each part so used. However, the 1990 Act does not clarify whether the reverse situation, namely the use of a building previously used as two dwellings as a single dwelling, constitutes a material change of use. A material change of use is not defined in statute or statutory instrument.
10. In considering this matter, I have had regard to the caselaw referred to by the parties¹. In assessing whether a material change of use has occurred, it is not sufficient to consider only the physical or external manifestations of the change. The assessment of materiality may also involve consideration of planning consequences arising from the change, including the loss of an existing use. In *Richmond*, it was held that the significance of the loss of residential units was capable of being relevant when determining whether a change of use was material. In *Royal Borough of Kensington and Chelsea*, the High Court confirmed that the absence of a specific development plan policy does not necessarily mean that a planning consequence can be disregarded. The court held that an inspector should consider whether the effect of a change on housing supply is significant when assessing materiality and should not exclude that consideration solely because it is not expressly reflected in planning policy. The cases therefore establish that whether a change of use is material is a matter of fact and degree, requiring consideration of whether the character of the use of the land has changed and whether any resulting planning consequences are sufficiently significant to amount

¹ *Kensington and Chelsea RBC v SCLG* [2016] EWHC 1785 (Admin), *Richmond-upon-Thames LBC v SSETR* [2001] J.P.L. 84, *London Borough of Lambeth* [2024] EWHC 1391

to a material change. The existence or absence of relevant planning policy may assist in that assessment but is not determinative.

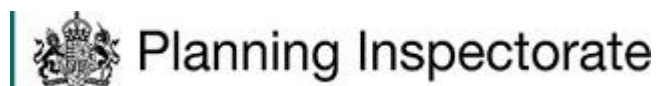
11. In this regard, I note the Council's concern that an amalgamation of the two units and the resulting loss of one unit would have significant planning consequences in the overall provision of housing stock in the borough, which would be contrary to those policies of the Camden Local Plan 2017 that seek to maximise and protect the supply of housing.
12. However, the LDC application does not propose the amalgamation of the two units. The building would continue to contain two separate dwelling units each with their own living room, dining room, kitchen, bedroom, bathroom facilities and access to the rear garden. Although the proposed staircase and door would provide internal access between them, this does not mean that the building will be used as a single dwelling. The appellant occupies the maisonette, and their mother-in-law occupies the garden flat below. The new staircase would enable the relatives to visit one another without needing to use the external door, but the appellant's mother-in-law would continue to live independently in the garden flat, and the dual lockable door would ensure that access between the two units would only be possible with the consent of both households. Therefore, based on the proposal as described by the appellant and shown on the drawings, I am not persuaded that the character of the use of the building would materially change as a matter of fact and degree.
13. The Council contends that there would be no planning mechanism to prevent any connecting door being permanently open, which would undermine any perceived separation of the two units, or to control future occupiers adopting a different arrangement consistent with a use as a single dwelling. Whilst those concerns are understandable, they are somewhat speculative. Should a material change of use occur in the future, the Council would retain the ability to take enforcement action where appropriate.
14. I have had regard to the decisions of other local planning authorities relating to similar developments elsewhere, as provided by the appellant. Although those decisions do not appear to have been tested through the appeal process or before the courts, they nevertheless lend support to my conclusions in this case.
15. For the reasons given, I find that the proposal does not involve the amalgamation of the two flats into one single dwellinghouse and it would not result in a material change of use. The proposed works do not constitute development under section 55(1) of the 1990 Act. I shall therefore grant the LDC.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed installation of internal staircase and door between lower ground floor and raised ground floor levels to interconnect flats was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Ollerenshaw

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 28 May 2025 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probabilities, the operations described in the First Schedule would not have constituted development on the date the application was made.

Signed

M Ollerenshaw

INSPECTOR

Date: 18 September 2026

Reference: APP/X5210/X/25/3372706

First Schedule

Installation of internal staircase and door between lower ground floor and raised ground floor levels to interconnect flats, as shown on drawing numbers: 006_P_EX_001, 006_P_EX_002, 006_P_EX_100, 006_P_EX_101, 006_P_EX_102, 006_P_EX_103, 006_P_EX_104, 006_P_EX_200, 006_P_EX_201, 006_P_GA_100, 006_P_GA_101, 006_P_GA_102, 006_P_GA_103, 006_P_GA_104, 006_P_GA_200, 006_P_GA_201.

Second Schedule

Land at 47 Dartmouth Park Road, London, NW5 1SU

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 September 2026

by M Ollerenshaw BSc (Hons) MTPI MRTPI

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Scale: Not to Scale

