



47 Dartmouth Park Road & Garden Flat, 47 Dartmouth Park Road,  
London NW5 1SU

## **SUPPORTING STATEMENT**

Certificate of Lawfulness for Proposed Development:

*"Creation of an interconnecting staircase between flats at 47  
Dartmouth Park Road".*

May 2025

**SUPPORTING STATEMENT**

**INTRODUCTION**

1. This Statement supports an application for a Lawful Development Certificate for a proposed development under Section 192 of the Town and Country Planning Act 1990 (as amended). This Statement sets out in detail the reasoning why a proposed internal stair does not constitute 'development', as defined by s.55(2)(a) of the Town and Country Planning Act 1990 ('the 1990 Act').

**SITE CONTEXT**

2. The site comprises a four-storey mid-terrace town house originally built as a single family dwelling. The site is currently laid out as self-contained flat at the lower ground floor and a maisonette above, which occupies the ground and upper floors.
3. The site frontage is set back from the street with a boundary wall, front lightwell and traditional front steps (through which No.47 is accessed), and a rear garden which is backed at the rear boundary by the rear garden of 37 York Rise. The Garden Flat at No. 47 is accessed via a staircase leading from the front garden to lower ground level.
4. Dartmouth Park Road is characterised by large semi-detached and terraced villas of 'character' from the mid to late 19th Century.
5. The building is not listed, though the site lies within the Dartmouth Park Conservation Area.

**DESCRIPTION OF PROPOSAL**

6. Works of refurbishment are proposed to the two properties, for which a revised planning application will shortly be submitted. As part of the works it is proposed to create an internal connecting stair between the lower ground floor flat and the maisonette above. The staircase will feature a dual lockable door, so that the fully

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self-contained natures of both the flat and the maisonette are preserved. The internal stair has been designed to provide an independent unit of accommodation for an elderly relative at lower ground floor level, which would enable the occupants of the two units to regularly 'drop in' on one another without having to enter and exit through the front door.

### LEGISLATION

7. Section 192 (1) of the Town and Country Planning Act 1990 (as amended) enables a person wishing to ascertain whether any use of buildings or land is lawful to apply to the Local Planning Authority for determination. The legislation states:

*"If any person wishes to ascertain whether —*

*(a) any proposed use of buildings or other land; or*

*(b) any operations proposed to be carried out in, on, over or under land,*

*would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question."*

8. Section 192 (2) of the 1990 Act states that:

*"If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."*

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**ASSESSMENT**

9. Whether planning permission is required for this proposal depends on whether it would constitute “development”, as defined in s55 of the Town and Country Planning Act 1990 (“the 1990 Act”).
10. An assessment of whether the proposal constitutes “development” requires consideration of both the physical/operational aspects of the works as well as whether there would be a “material change in the use of any buildings or other land”.
11. The property is not statutorily listed and the physical/operational works in question are internal, and so are excluded from the meaning of “development” by s55(2)(a) of the 1990 Act.
12. It is also held that no material change of use occurs to either the flat or the maisonette, as both units remain autonomous and self-contained; both remain in independent Class C3 use; and the separate planning units are maintained.

**BARRISTER'S OPINION**

13. Based upon the application submissions my client has sought a legal Opinion from Ms Flora Curtis of 39 Essex Chambers on whether the proposed development constitutes development. Ms Curtis is an experienced and highly regarded planning lawyer, called to the bar in 2019, and a member of one of the leading planning chambers in the UK.
14. Ms Curtis’s Opinion, submitted in support of this application, concurs with the view that as the works are internal they are excluded from the meaning of “development”, as defined in s55(2)(a) of the 1990 Act.
15. In assessing whether a material change of use would occur she states:

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*“In terms of the question whether the proposal amounts to a material change of use of the Property, this is a question of fact and degree. A material change of use is one which brings about a definable change in the character of the use made of the land (Hertfordshire CC v Secretary of State for Communities and Local Government [2012] JPL 836 at [40]). The character of the use of the Property must change so substantially as to amount to a material change of use (see, for example, Blackpool BC v Secretary of State for the Environment (1980) 40 P&CR 104 at 111).*

*In my view, based on the factual background set out above, the insertion of the proposed staircase will not amount to a material change in the use of the Garden Flat or Maisonette. Both dwellings will remain in use as independent, self-contained class C3 dwellings. They will remain as separate planning units, with neither residential unit being lost. It is therefore arguable that there will not be any change in the use of the dwellings, let alone a material change.*

*If, however, it is considered that introducing the proposed works will lead to a change in the character of the use of the Property, it is difficult to see how such a change would be anything more than de minimis. The only change would be the ease with which the residents of each dwelling would be able to obtain access to one another’s properties. The dwellings would be accessible internally, rather than only being accessible externally. The dual-lock door would however remain in place to ensure that such access could not be obtained without the consent of both sets of residents, as is currently the case. The self-contained and independent nature of each dwelling would therefore be preserved. Nor would there be a breach of policy H3 of the Council’s Local Plan, or of draft policy H3 of the Local Plan Review. Any change in the use of the Garden Flat or Maisonette resulting from the proposed works would likely not be so substantial as to amount to a material change of use.”*

16. Her judgment, clearly set out in the written Opinion, is that the re-introduction of an internal staircase between lower ground and ground floors, while maintaining the autonomous nature of the flat and the maisonette, does not constitute “development” requiring planning permission.

## CONCLUSION

17. The creation of an internal stair, as described above and shown on the submitted drawings, would not constitute development, as defined by s.55(2)(a) of the 1990 Act.

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18. In light of the foregoing, in application of Section 192 of the Town and Country Act 1990 (as amended), the proposals would be lawful and we therefore anticipate the grant of a Lawful Development Certificate in due course.