

Time Limit Expires: 12 June 2025
Application No: DC/25/140113
Delegated / Committee

Fast / Normal:
Ward: LeeG
Fee Paid: £298.00

Location: LEEGATE SHOPPING CENTRE, LEEGATE, LONDON, SE12

Application Dated: 09 May 2025

Agent (if any): Mr/Ms Camara Montagu Evans

Applicant: Mr/Ms Please refer to company name London Square Developments Ltd.

Proposal: An application submitted under Section 96a of the Town & Country Planning Act 1990 for a non-material amendment in connection with the planning permission (DC/22/126997) dated 01 November 2024, for the 'Proposed development at Leegate Shopping Centre SE12, bounded by Burnt Ash Road, Eltham Road, Leyland Road and Carston Close, for the demolition of existing buildings, and the construction of buildings up to 15-storeys (including basement level) to provide a comprehensive mixed use development including residential (Use Class C3), flexible commercial floorspace (Use Class E), a community centre (Use Class F2) and a public house (Sui Generis), together with associated public realm, landscaping and highways improvements, vehicular access, car parking and servicing arrangements, cycle parking and stores, and all other ancillary works', in order to amend the Description of Development to "Proposed development at Leegate Shopping Centre SE12, bounded by Burnt Ash Road, Eltham Road, Leyland Road and Carston Close, for the demolition of existing buildings, and the construction of buildings to provide a comprehensive mixed use development including residential (Use Class C3), flexible commercial floorspace (Use Class E), a community centre (Use Class F2) and a public house (Sui Generis), together with associated public realm, landscaping and highways improvements, vehicular access, car parking and servicing arrangements, cycle parking and stores, and all other ancillary works"

Plan Nos: 2503 CZ 00 XX DR A 0001 Rev D01;
Covering Letter.

Background Papers: (1) PP-13995544
(2) Development Management Local Plan (adopted November 2014) and Core Strategy (adopted June 2011)

DMLP/CI Information: Lewisham's check for height of Heathrow flight
ROFSW Extent 1 in 30
PTAL 3
Small HMO North Ext A4
Flood Risk Zone 3
Flood Risk Zone 2
Shopping Non-Core Area

Major District Centre
Air Quality
Lee Neighbourhood Forum
Not in a Conservation Area
Not a Listed Building

Earliest Decision: 05/06/2025

Consultations and Replies

Lee Neighbourhood Forum

Neighbours & Local Amenity Societies etc.

Lee Manor Society
Blackheath Society

OFFICER REPORT: DC/25/140113 - Leegate Shopping Centre, SE12

RECOMMENDATION

GRANT NON-MATERIAL AMENDMENT

OBSERVATIONS

SITE LOCATION AND DESCRIPTION

The application site lies within the District Centre of Lee Green, which is the eighth largest of the nine major and district town centres within the borough.

The site measures an area of 1.92 hectares and is bounded to its western side by Burnt Ash Road, Leyland Road to the east, is Leyland Road, Carston Close to the south and to the north is the A20 that links Eltham Road to Lee High Road.

The northern site boundary lies adjacent to the Royal Borough of Greenwich.

Site Designations include:

- Site Allocations Local Plan – SA23
- District Centre
- Lee Neighbourhood Forum
- PTAL 3
- Flood Risk Zone 2
- Air Quality Management Area

RELEVANT PLANNING HISTORY

Permission was granted on 1 November 2024 for the demolition of existing buildings, and the construction of buildings up to 15-storeys (including basement level) to provide a comprehensive mixed use development including residential (Use Class C3), flexible commercial floorspace (Use Class E), a community centre (Use Class F2) and a public house (Sui Generis), together with associated public realm, landscaping and highways improvements, vehicular access, car parking and servicing arrangements, cycle parking and stores, and all other ancillary works. **(DC/22/126997)**

PRESENT APPLICATION

The current application has been submitted under Section 96a of the Town & Country Planning Act 1990 for a non-material amendment in connection with the planning permission **DC/22/126997** dated 1 November 2024 to delete reference to maximum building heights in the description.

CONSULTATIONS

All interested parties of the site are required to be notified of the application by the Applicant, and representations received are required to be taken into account. In this case, the Applicant is the only land-owner.

Neighbour consultation is not required for s96a applications, however it is noted that 88 objections have been received from neighbours and local groups, including Lee Forum, Lee Manor Society and Blackheath Society. The objections mostly relate to the plans that were presented at a public exhibition which showed Building A1 had been increased by 3-storeys from the consented 15, in addition to height increases elsewhere. At the time of this report, Leegate proposals remained at pre-app stage, and the exhibition proposals had since been revised.

Objections received from local groups that relate to the s96a process includes the following:

- The council is legally required to 'have regard to the effect of the change on the original permission' when deciding what can be approved as non material via a S96a application, and what instead requires a full planning application. Whilst there is no definition in law of non material in this context, on it's website the council, and other councils agree on their websites, that the following do not qualify for approval under S96a (*italics in brackets Lee Forum's own*):

- where the change would alter the description of the original permission (this S96a application cover letter states explicitly that it is seeking to change the description of the original application)

- where the proposed change is material/significant in terms of its scale in relation to the original approval (*note London Square's amendments at community consultation increase Block C height 25%; increase Block B height 12% and increase Block A height 20%; increase housing numbers by 17%*);

- where the amendment is contrary to any relevant development plan policy (*note- the councils adopted Lee Neighbourhood Plan, and its advanced stage Local Plan both state Leegate should not be above 12 storeys and removal would allow additional breaking of these*);

- where the proposed change is contrary to a restrictive condition on the original permission (*note - the original application includes this restrictive condition: 'Blocks: A (up to 15 storeys); B (up to 12 storeys); C (up to 8 storeys)'*);

- where there would be significant increases in site coverage, building heights or site levels

- Lewisham's S96a checklist makes clear that applications must be accompanied by a full marked up version of the approved plans. The planning portal shows the S96a application as validated yet marked up plans are not available, meaning we cannot comment on these plans

- What is clear to any reasonable person is that the height of the main tower Block A of the proposed Leegate development was a very material concern raised by numerous Objections to the DC/22/126997 Application and on that basis LBL should very clearly reject the current s.96A Application as being a material change or if not, then ultimately being a change which will directly lead to a material change by way of a subsequent s.73 Application to be made by London Square (presumably in the very near future) as they have themselves said they will do.
- The height of the Block A tower building was a matter of great concern to local residents throughout the previous (Galliard) Planning Application and is of no lesser concern now. To consider removing the text that relates in general to its overall height would simply be wrong and a dereliction of LBL's responsibilities to its borough's residents as this is clearly a material consideration of the proposed development.
- Between 2022 to November 2024 many residents and businesses alike objected to the proposed 15-storey (including basement level) Block A main tower. If the words '*up to 15-storeys (including basement level)*' are removed from the description of the 'Development' as proposed under DC/25/140113 then it must surely be the case that this compromises those objections that were made because you cannot further object to a description of 'Development' which does not contain text relating to the proposed number of storeys or overall heights of buildings.
- If this s96a application is granted, we would expect to strenuously oppose a subsequent s73 application on its substance, particularly on the proposed increase to the height and housing density of the development. We believe that to approve it as non-material would be perverse and unreasonable and would be a gross betrayal of the consultation process to develop the new Lewisham Local Plan, and particularly its policy on heights for specific neighbourhoods in the QD4 and the Tall Buildings Study Addendum.

LEGISLATIVE and POLICY CONTEXT

Section 96A of the Town and Country Planning Act 1990 (as amended) allows non-material amendments to be made to an existing planning permission. Planning Practice Guidance (2014) provides guidance on this point and advises that there is no statutory definition of 'non-material' as it is dependent on the context of the overall scheme. The guidance goes

further to state that the local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990.

Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

Section 38(6) of the Planning and Compulsory Purchase Act (2004) makes it clear that 'if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'. The development plan for Lewisham comprises the Core Strategy, the Development Management Local Plan, the Site Allocations Local Plan and the Lewisham Town Centre Local Plan, and the London Plan. The NPPF does not change the legal status of the development plan.

Planning Considerations

Revised Description

The main planning consideration is whether the proposed amendment is considered to be non-material in the context of the overall development approved.

The amending of a description by S73 was subject to a Court of Appeal decision *Finney v Welsh Ministers (2019)*, which concluded that the planning authority cannot use S73 to change the description of development and that a condition altering the nature of what was permitted would have been unlawful, ie the purpose of a S73 is to give relief against one or more conditions - the description may not be considered as part of that exercise.

Following the judgement, an applicant may therefore resort to a S96a if the alteration is non-material, or submit a new application if the change is 'material.'

Approved scheme DC/22/126997 originally proposed a mixed use development within buildings of up to 15-storesys.

The applicant intends to increase the number of units and building height, which will be proposed within a S73 application - at the time of writing this report, the S73 had not been formally submitted to the LPA. This S96a application will therefore seek to remove reference to height, ie '**up to 15-storesys (including basement level)**', with the reworded description being:

- **Proposed development at Leegate Shopping Centre SE12, bounded by Burnt Ash Road, Eltham Road, Leyland Road and Carston Close, for the demolition of existing buildings, and the construction of buildings to provide a comprehensive mixed use development including residential (Use Class C3), flexible commercial floorspace (Use Class E), a community centre (Use Class F2) and a public house (Sui Generis), together with associated public realm, landscaping and highways**

improvements, vehicular access, car parking and servicing arrangements, cycle parking and stores, and all other ancillary works.

The current s96a application is seeking to amend the consented 'description' only. Should the Applicant propose additional storeys and quantum of units, they will be required to formally submit a further planning application (s73/ FUL) that would include neighbour consultation, and the undertaking of a detailed assessment by the Council to determine whether the amendments are acceptable and appropriate - approval of the s96a in this case to omit the height does not mean the development will necessarily be consented for increased height.

A local group objection stated:- If London Square are successful in their s.96A Application then it is noteworthy that many documents contained within the approved Application DC/22/126997 will still refer to a 15-storey tower Block A as well as all of the drawings and documents showing the height of the buildings or number of storeys within those buildings. The Fire Statement submitted with the approved Application will also relate directly to a 15-storey tower Block A building such that any change to the description of 'Development' would appear to become meaningless.'

The aim of a s96A application should be to secure an amended description that is as unspecific as possible regarding dimensions or numbers of units for example, leaving such matters to be defined by the planning conditions and the drawings listed in them as far as possible, and thereby widening the scope for future amendments to be made. Condition (3) 'Develop in Accordance with Approved Drawings and Documents' of the consented scheme, which requires the development to be carried out strictly in accordance with the approved application plans and drawings, will not be subject to any changes as part of the current s96a. As stated earlier, the s96a is not seeking to increase the height of development - it would be for a s73 application to amend the consented plans, documents and Fire Statement accordingly.

It should also be noted that the 15-storey height was the only numerical reference in the consented description, ie the quantum of residential units, overall commercial floorspace, and heights of Blocks A, B and C were included in Condition (2) below. Officers are satisfied that a development proposal can be clear without such references within the planning description.

Accordingly, a future s73 application would seek to amend relevant conditions, including the heights stated in Condition 2.

2) Approved Quantum

The development hereby approved in detail shall be implemented in accordance with the approved details:

- a) 561 residential units (Use Class C3).
- b) Flexible Commercial floorspace (Use Class E) of 690sqm.
- c) A public house (Sui Generis).
- d) A community centre (Use Class F2).
- e) Blocks: A (up to 15 storeys); B (up to 12 storeys); C (up to 8 storeys).**
- f) Minimum provision of 1150 no. cycle spaces.
- g) Minimum provision of 57no. residential car parking bays.
- h) Minimum provision of 16no. commercial car parking bays.
- i) 20 no. wheelchair accessible car parking spaces.

Reason: To ensure that the development is implemented as approved and is acceptable to the local planning authority.

The effects of the amendments are de minimus and will not alter the substance of the development from that already granted permission. As such, Officers consider that the non-material amendment procedure is the correct route for the alterations. Considering the above, Officers are satisfied the description change is non-material.

CONCLUSION

Officers are satisfied that the proposed amendment is non-material in nature. The purpose of the s96a submission in this case is not to undertake an assessment of proposed changes to consented building heights and resulting impacts. Revisions to the scale and heights of the consented buildings to allow for an uplift in residential units will be subject to a future S73 planning application, which will be formally assessed at that stage and would be subject to statutory consultation procedures.

It is therefore recommended the S96a is granted.

Conditions

Informatives

- A. The applicant is advised that this permission forms part of the original permission DC/22/126997 and all other conditions attached to that permission are still applicable to the amended scheme. Furthermore for the avoidance of doubt the following plans and documents attached to the original permission are still relevant:

Existing Plans

T90150 Rev P01; T10099 Rev P01; T10100 Rev P01; T10101 Rev P01; T10102 Rev P01; T10103 Rev P01; T10104 Rev P01; T10105 Rev P01; T10106 Rev P01; T10107 Rev P01; T10108 Rev P01; T10201 Rev P01; T10202 Rev P01; T10203 Rev P01; T10204 Rev P01 (**Received 30 May 2022**)

Proposed Plans

T90100 Rev P01; T20205 Rev P03; T20310 Rev P01; T20316 Rev P01; TA20209 Rev P01; TA21402 Rev P01; TA21403 Rev P01; TB20202 Rev P01; TB21403 Rev P01; TB21404 Rev P01; TB21405 Rev P01; TB21407 Rev P01; TC20202 Rev P01; TC20204 Rev P01; TC21401 Rev P01; TC21402 Rev P01; TC21403 Rev P01 (**Received 30 May 2022**)

TA21404 Rev P02; TC20201 Rev P02 (**Received 5 December 2022**)

T120100 Rev P04; T120101 Rev P03; T20203 Rev P02; T20301 Rev P03; T20302 Rev P03; T20303 Rev P03; T20305 Rev P03; T20306 Rev P02; T20307 Rev P02; T20309 Rev P02; T20312 Rev P02; TA20102 Rev P03; TA20103 Rev P03; TA20108 Rev P03; TA20109 Rev P01; TA20110 Rev P03; TA20114 Rev P03; TA20115 Rev P03; TA20204 Rev P03; TA20205 Rev P03; TA20207 Rev P02; TA20210 Rev P02; TA21401 Rev P02; TA21405 Rev P02; TB20201 Rev P02; TB20203 Rev P02; TB20204 Rev P02; TB20206 Rev P02; TB20207 Rev P02; TB20209 Rev P02;

TB20211 Rev P02; TB20212 Rev P02; TB21401 Rev P02; TB21402 Rev P02;
TB201406 Rev P02; TB120100 Rev P03; TB120101 Rev P02; TB120102 Rev P02;
TB120105 Rev P03; TB120106 Rev P02; TB120107 Rev P02; TB120110 Rev P02;
TB120112 Rev P02; TC20203 Rev P02; TC20205 Rev P02; 01002 Rev P02; 01003
Rev P01 **(Received 19 February 2023)**

TA20101 Rev P04 **(Received 5 April 2023)**

T20099 Rev P04; T20201 Rev P04; TA20099 Rev P04; TA20100 Rev P04; TA20201
Rev P03; TA20202 Rev P04; T20205 Rev P03; 01000 Rev P04; 01001 Rev P03;
00010 Rev P04 **(Received 22 June 2023)**

T20100 Rev P05; T20101 Rev P05; T20102 Rev P04; T20103 Rev P04; T20104 Rev
P04; T20105 Rev P04; T20106 Rev P04; T20107 Rev P04; T20108 Rev P04; T20109
Rev P04; T20110 Rev P04; T20111 Rev P04; T20112 Rev P04; T20113 Rev P04;
T20114 Rev P04; T20115 Rev P04; T20201 Rev P05; TB20205 Rev P04; TB320100
Rev P04; TB320101 Rev P04; TB320102 Rev P04; TB320103 Rev P03; TB320104
Rev P03; TB320105 Rev P04; TB320108 Rev P03; TB320110 Rev P03; TC20100
Rev P04; TC20101 Rev P04; TC20102 Rev P04; TC20103 Rev P04; TC20104 Rev
P04; TC20105 Rev P04; TC20106 Rev P03; TC20108 Rev P03; TC20201 Rev P03
(Received 6 October 2023)