OBJECTION TO: Section 96A Planning Application ref DC/24/140113

The Lee Manor Society (LMS) speaks on behalf of residents of Lee Green and Hither Green, particularly those who live within the Lee Manor Conservation Area (CA) and generally speaks for people who live within easy walking distance of the proposed Leegate Development site on the Lee crossroads bounded by Burnt Ash Road and the A20 Eltham Road. The following is our Objection to the Section 96A Planning Application submitted by the Agent Montagu Evans on behalf of their client London Square Developments Ltd (London Square).

Each of our points below should be read as standalone issues and ones that in conjunction together add up to a significant 'material change' to the previously Granted Planning Application ref DC/22/126997.

Point 1 - London Square Developments Ltd are seeking by way of their current s.96A Application to remove the words 'up to 15-storeys (including basement level)...' from the description of 'Development' contained within the Decision Notice as a part of the approved Planning Application ref DC/22/126997. If permitted by the London Borough of Lewisham (LBL), London Square have made clear in their consultation document available on their website (www.leegateregeneration.co.uk) at page 5 of that document under the heading 'Block A' that:

Block A - With the healthcare facility moving to the ground floor of Block B, we have made adjustments for different 'floor to ceiling' heights between commercial and residential storeys. Following meetings with Lewisham Council and the Design Review Panel, the team have been encouraged to test additional height at building A1. The current proposals would increase the height of A1 from 15 to 18 storeys'.

As a result LBL can be under no illusions that if a successful outcome to their current Section 96A Planning Application is achieved, London Square will then submit a further Section 73 Planning Application to modify some of the Conditions of approved Application ref DC/22/126997 and achieve a new Planning Approval. If successful in that further Application London Square will then be in receipt of two approved Planning Applications each with differing Conditions. It is of significant note that London Square state that they 'have been encouraged to test additional height at building A1'. It would appear from this statement that LBL (along with their Design Review Panel) are complicit in London Square's approach to the matter of this Application.

• Point 2 - Within the current s.96A Application submitted by Montagu Evans there is a heading titled 'Non-Material Amendments Sought' where the second text box requests: 'Please state why you wish to make this amendment'. Under their response, the Applicant has stated 'Please refer to covering letter'. Within the covering letter submitted by the Agent the reasoning behind their current Application is stated as being: 'To ensure the scheme remains deliverable, the Applicant is seeking changes to the extant permission via a forthcoming Section 73 application, which will include (inter alia) changes to the consented building heights'. So the only objective reason provided by London Square appears to be that the current approved scheme is not viable although they clearly do not state that – they state rather the proposed development is not 'deliverable'. From London Square's consultation literature (which is not included within the current Application but has been made publicly available) it is stated that the reason for the necessary changes to the extant Planning Permission ref DC/22/126997 is that London Square wishes to deliver around 70 additional homes over and above those



approved in 2024 as a result of new building and fire regulations and to boost the amount of affordable housing to be delivered within the scheme. It should be noted that London Square purchased the Leegate site from Galliards in early-2025 when the new building and fire regulations they quote as being 'changed' were well known about within the construction industry generally, meaning that London Square would have purchased a site for an approved development that they claim they are now unable to deliver to their requirements without the current approved Application being changed. It would be an incredibly incompetent developer who would spend serious amounts of money on purchasing a site with an extant Planning Approval that they knew full well to be unviable in meeting their own requirements. From this we can only surmise that London Square are simply 'testing' the limits of the current approved Application ref DC/22/126997 to garner more profit because they would not have purchased the rights to a development that was incapable of being achieved. The 'test' referred to is a test against both LBL and the residents who live within close range of this development and neither we nor LBL should be being used as guinea pigs for 'testing' when an extant approved planning permission already exists. Additionally, London Square appear to be saying that one of the reasons they are seeking to modify the Decision Notice of DC/22/126997 is that they wish to submit a further s.73 Application – in itself this is an insufficient reason for LBL to grant the s.96A Application. As far as we can see London Square have offered no 'non-material' objective changes to the Leegate development proposals to warrant the approval of Application ref DC/25/140113 from LBL.

Point 3 - Section 96A applications under the Town & Country Planning Act require Local Authorities to determine whether a proposed amendment(s) is or are truly 'non-material' and whether such changes as are proposed by the Applicant would compromise relevant objections to the original proposal. Such Section 96A applications only allow local planning authorities to approve non-material amendments to existing planning permissions and if such changes were considered material then LBL would be unable to grant approval to such an Applicant. In deciding whether a change is material, a local planning authority must have regard to the effect of the change. The effect here will be to usher in a new s.73 Application as London Square have made clear in their publicly available consultation material.

What is known from the period in 2022 when the previous developer Galliards first submitted their Leegate development proposals up until conditional approval was given by LBL in November 2024, is that the height of the main Block A tower was of considerable concern to residents of the area and one which they fought hard against and ultimately lost. LBL cannot and should not denigrate the concern of a material change of height to being a non-material change by the removal of the words *up to 15-storeys* (including basement level)...' from the Decision Notice because without those words there is no detailed description of the development proposals. 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.



- Point 4 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.
- Point 5 Within the 2022 Planning Application Form under the heading of 'Description of the Proposal' the form asks the Applicant to 'describe details of the proposed development or works including any change of use'. By way of 'details' it is our contention that a detail as simple and as pertinent as the number of storeys in a building (of whatever size) or overall height of a proposed tower block, would always reasonably be expected to be provided by an Applicant in their Application Form. The word 'detail' can be considered to mean an individual fact or item or the word 'details' can mean to give full information about something. To not provide such an individual fact or full information about a proposed development would appear to limit the description of the proposal to an inconclusive generalised matter. Take for example the typical description 'it is our intention to build a building'. On its own this statement is very clearly too little information on which an objective test of the description of a proposed building scheme can be assessed. Even allowing for further drawings, documents, reports, etc that accompany such an application, whereby more detail of the proposed development can be ascertained, the 'description of the proposal' must be sufficient to objectively assess the proposals against.

In proposing to remove the text 'up to 15-storeys (including basement level)...' and in removing all other surplus text around other aspects of the Leegate development proposals that do not ascertain to the main Block A tower, London Square's new 'Description of the Proposal' could actually read:

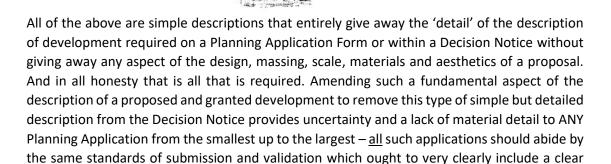
An application for the 'Proposed development at Leegate Shopping Centre SE12, for the demolition of existing buildings, <u>and the construction of buildings</u> to provide a comprehensive mixed use development and all other ancillary works'.

We cannot see that 'the construction of buildings' suffices as a reasonable description of the details of a large scale development in relation to the heights of the buildings and their possible number of storeys for each building. There is simply nothing in the above 'reduced' statement that is objective enough to test the application drawings, documents, reports, etc against. To this end we cannot see how LBL can accept this 'non-material' change to the approved Planning Application ref DC/22/126997 as it would make no sense to the Application when viewed as a whole.

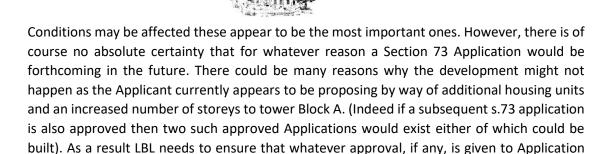
A number of simple descriptions of developments could for instance be as follows:

- a single storey rear property extension;
- a 2-storey side domestic extension;
- a 3-storey block of flats;
- a 4-storey apartment building;
- a 5-storey mixed use development;
- a 6-storey office building;
- a 14-storey residential building.

statement on the height of a proposed building.



- Point 6 LBL have the right to request any Planning Application information specified on an up-to-date local list published on their planning website, where information requested with a particular planning application must be reasonable having regard, in particular, to the nature and scale of any proposed development and about matters which it is reasonable to think will be a material consideration in the determination of the application. It is beyond any doubt that where an application for a 15-storey residential building (including basement level) is proposed on a site with nothing much more than 3-storey buildings in its immediate proximity, that the height of the very prominent Block A tower in particular would be expected to be a detail which LBL would expect to be included in the description of 'Development'. For LBL not to request such information within a Planning Application and to reiterate it without such detail within a Decision Notice would simply be wrong. 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. The government in its guidance on making Planning applications states that 'Before publicising and consulting on an application, the local planning authority should be satisfied that the description of development provided by the applicant is accurate'. In respect of this the LMS cannot see how 'the construction of buildings to provide a comprehensive mixed use development' can possibly be considered to be an accurate or sufficient detail to LBL's requirements.
- Point 7 Suffice to say that if the words '15-storey building (including basement level)' are successfully removed by way of London Square's s.96A Application from the Decision Notice, that in future no subsequent development of any scale within the London Borough of Lewisham, will be required to state within the detail of its 'Description of the Proposal' within either the Application Form or included within the Decision Notice, what the intended number of storeys of any building or buildings is or are to be. This could then very possibly lead to numerous Section 73 Applications to vary any Conditions on a granted Application imposed by LBL in any Decision Notice to further increase the 'approved' number of storeys. This would no doubt lead to a very unsatisfactory position for the Borough and residents alike as there would be little if any certainty behind any granted planning application(s).
- Point 8 If LBL approves the s.96A Application from London Square then it is reasonable to assume that a subsequent s.73 Application will then be made shortly afterwards by the Applicant to modify certain Conditions relating to the Decision Notice of approved planning application ref DC/22/126997. The most relevant Conditions appear to be Condition 2 (Approved Quantum) and Condition 3 (Approved drawings and documents). Whilst other



the description of the 'Development' of the Decision Notice. As noted earlier in this Objection this could provide precedent for other Applicants to follow in any subsequent Planning Applications to be made to LBL of any built form for any other development sites within the Borough be they small, medium or large scale developments.

ref DC/25/140113 that it can standalone and be read as a meaningful grant of planning permission without the text 'up to 15-storeys (including basement level' being included within

- Point 9 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 15storeys (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.
- Point 10 Applications under Section 96A of the Town and Country Planning Act are intended to provide a quick and simple process by a Local Authority Planning department, where decisions are due within a 28-day period and which leave the original planning permission wholly intact. Such Applications cannot and should not be made where the issue or issues wishing to be amended could in any way be considered to be material to the Application. LBL's focus on assessing the new Application DC/25/140113 must therefore be on whether the proposed amendment is truly non-material and whether it would compromise relevant objections to the original proposal. It is our firmly held view that removing the words 'up to 15-storeys (including basement level)' from the description of the 'Development' of the Decision Notice is indeed a material change to the earlier granted Application on the basis that it removes all reference to any aspect of height from any of the proposed buildings that form the significant Leegate development, but most importantly it removes clarity from the height of the tallest proposed building which was always a major concern of Objectors to the currently granted Application.
- Point 11 A valid reason for objecting to Application ref DC/25/140113 is that the proposed amendment has the potential to adversely affect the amenity of neighbouring properties, including increased traffic due to an increase in residential units and of overshadowing. However, the current Application does not state what the proposed change is intended to generate. We all know that London Square have stated publicly their intent to increase the height of tower Block A and to increase the number of residential units overall but this is not stated within Application DC/25/140113. So as Objectors we are almost left impotent in being able to clearly object to a material change, because none has been described by the Applicant in their s.96A application they have simply 'inferred' that the scheme as it stands is unviable and undeliverable to their requirements. As a typical example of this we do not know for certain what height the main tower Block A is intended to be other than through consultation



literature and in reality these heights may go higher or lower depending on the whims of London Square. There will be no certainty to this until a s.96A application has been approved and a subsequent s.73 application is made. But one significant difference is this – for an additional 3-storeys of building on top of a current 14-storey building (15-storeys including basement level) typically adding around 9 metres to the height of that building (at our estimation), at both sunrise and sunset, additional shadowing of surrounding land and properties will extend to a minimum of around an additional 50 metres at those times of day based on a 10 degree sun angle above the horizon, and that these properties and land are those that would not have been affected by the height of the building granted within Application DC/22/126997. There can be no doubt therefore that such a change is a 'material change' as it directly affects the amenity of persons who were previously unaffected and who must therefore be given the right to object, support or remain neutral to the effect of overshadowing, loss of daylight and amenity and loss of light generally from an increased height tower Block A.

- Point 12 A further aspect that cannot be determined until the actual proposed heights of the buildings that make up the Leegate development are known is that of wind. The micro-climate of wind around the bases of tall buildings can be very significant and one of our members has personal experience of this. In the early-1980's Michael Haste attended studies at University where his department was situated at levels 15-18 of a 20-storey 'Miesian' modernist tower block. Being around 78m high and 20-storeys in height it is the second highest building in the city of Sheffield. The building unfortunately has no canopy of any significance protecting its entrance and as a result it suffers directly from very significant wind effect which rolls down the front façade of the building and causes pedestrians significant discomfort in trying to enter into the building. The main tower block A proposed at the Leegate Development will almost certainly have a similar wind effect as the south-east of England generally suffers from westerly winds, and these winds on a blustery day will create significant discomfort for pedestrains in particular around the Lee crossroads as a result. Increasing the height of tower Block A will only add further to this significant concern and again is a material consideration of increasing the height of any tower building or buildings. If a previous wind study has been undertaken on the current 15-storey tower Block A it will be of no relevance to a building that has an increased 3-storey height – again another material consideration of a change to tower Block A. (If LBL do not believe the above then they are advised to walk past Trinity School on Taunton Road on a blustery day to see such wind effects from only a 4-storey building – this wind disappears once you leave the immediate vicinity of this building and is clear evidence of the micro-climate caused directly by such buildings).
- Point 13 A further possible material concern is that as tower Block A increases in height there will come a point at which its presence may become visible on the Blackheath skyline when viewed across the heath from the A2 Shooters Hill Road. And this is important and material because at least one church spire (that of All Saints Church, Blackheath) could be directly affected by having the proposed new tower crossing behind it as pedestrians, cyclists or road users travel eastwards along the A2 and look across the Heath towards Lee Green. But equally, it is also possible that the beautiful slender spire of St Michael's Church on the Cator Estate in Blackheath could just be affected as well albeit it is on the very edge of sightlines across the heath towards the new tower Block A. But we cannot definitely claim this as clearly we do not yet know heights and we do not have ground levels of the relevant buildings, but this should not itself prevent a concern from being raised. We have seen exactly this problem happen with



the Lewisham Gateway buildings' which are now visually highly obvious when looking south-westwards across the Blackheath open heath area and also of the Kidbrooke Station residential development when looking south-eastwards across the open heath. As far as we are aware however those two views do not include church spires within their sightlines and as such are of less concern in the visual Blackheath landscape. This therefore could well be another material concern.

(See attached basic Sightlines Study appended at the end of this Objection).

• <u>Point 14</u> - With regard to the Lee Neighbourhood Plan (adopted by Lewisham Council in February 2024) it is stated in relation to the Legate site:

'This site borders two existing conservation areas (Lee Manor and Blackheath) and a proposed Conservation Area. As such, special attention should be paid to building form, proportions, building materials, textures, tones and colour palettes and overall appearance. In accordance with Lewisham's 2022 regulation 19 Local Plan policy QD4C and the 2023 Tall Buildings Addendum, the maximum height of a building on this site shall not normally be more than 32.8 meters (10 storeys) to 39.2 meters (12 storeys), and designed and built to the human scale per policy HD2C of this plan, for example, by integrating generous public realm treatments, building set backs and articulations, active ground floor frontages and greening measures. Applicants must demonstrate how the Area Design Guidance in appendix 1 has been considered in the design and access statement, illustrating how proposals respect the Grade II listed fire station within the immediate vicinity of the building'.

Very clearly in proposing a modification to the heights of buildings within the Leegate Development the above noted concerns (particularly the height restrictions) should not be overridden (again) other than for the benefit of the area and its residents and businesses specifically where such improved amenity must be very clearly shown by the Applicant.

 <u>Point 15</u> - With regards to the draft Lewisham Local Plan (not yet adopted by Lewisham Council) it is again stated at MM17 for Policy QD4 'Building Heights' in relation to the Leegate site:

'A - Tall buildings are substantially taller than their surroundings and cause a significant change to the skyline. Within Lewisham Tall Buildings are defined as buildings which are 10 storeys or 32.8 meters measured from the ground level to the top of the building (including any rooftop equipment), or greater. Development proposals for tall buildings will be assessed against and must comply with London Plan policy D9 (Tall buildings) and the following:

B Not relevant.

C Within those locations identified as appropriate for tall buildings, the maximum height of buildings shall not normally be more than:

f. 32.8 meters (10 storeys) to 39.2 meters (12 storeys) in Bellingham and Lee Green.' (All extraneous text has been removed from the above).

So again we see the maximum height restriction of 12-storeys being set down by Lewisham Council which should therefore be seriously respected by LBL.



- Point 16 For anyone who previously objected to the proposed height of the Leegate Development tower Block A (or indeed any of the other building Blocks) then any material change to those heights (and in particular to the height of the main tower Block A), can only strengthen further objections which would come from any future s.73 Application. As such a material increase in height of an additional 3-storeys onto the main tower Block A would very clearly worsen concerns previously raised about the original (now granted) planning application ref DC/22/126997 and that this is very clearly a material concern of Application ref DC/25/140113.
- <u>Point 17</u> Condition 2 (Approved Quantum) of the Decision Notice dated 1st November 2024 for Application ref DC/22/126997 states that:

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

e) Blocks: A (up to 15 storeys); B (up to 12 storeys); C (up to 8 storeys)'.

To this end both this Condition and a significant number of the drawings noted within Condition 3 (Approved Drawings and Documents) could be said to be at odds with the removal of the words 'up to 15-storeys (including basement level' from the description of 'Development' contained within the Decision Notice (which would now state no building heights). We are however wholly currently reliant on London Square's public consultation documents to know their intentions as there is no reference within the current s.96A Application to what height the proposed new buildings are to be, only that 'Following grant of planning permission in November 2024, ... To ensure the scheme remains deliverable, the Applicant is seeking changes to the extant permission via a forthcoming Section 73 application, which will include (inter-alia) changes to the consented building heights', but no actual intended heights are referred to within London Square's current s.96A Application. Interestingly, the currently approved elevation drawings have a spot level of 'AOD 69.765' noted on the parapet above the roof level of the 14th storey of tower Block A, but there is no ground level provided and the floor plans equally do not show a ground level. So we can only assume that LBL, if they were to agree to the current s.96A Application, may not actually know the true height of the currently granted and approved tower Block A building unless they know each individual storey height (as they may differ) from another source?

Point 18 - Within the Decision Notice dated 1st November 2024 the description of the Leegate Development proposal is given as for 'the construction of buildings up to 15-storeys (including basement level). The Application Form (redacted) dated 30th May 2022 states the 'Description of the proposal' as being 'to provide within buildings of up to 15 storeys'. Lewisham's Planning Portal does not appear to indicate that the Application Form for DC/22/126997 has been superceded and so it is assumed this 'Description of the Proposal' stands. The drawings attached to the Application ref DC/22/126997 show the tower Block A as having a basement level, a ground floor level and 14 further levels of accommodation within the tower Block A building – in other words 16 storeys in total or 15 storeys excluding the basement level not including it. There appears to be a serious error here in exactly how many floors of accommodation for tower Block A have been formally granted Planning Permission by LBL if the Granted permission says one thing but the approved drawings and 'Description of the Proposal' show another.

London Square's publicity material states that their intention is to test 'an option of up to 18 storeys of building A1; an increase on the 15 storeys that have already been consented for this building' and that an application for an increased height of buildings would follow the current



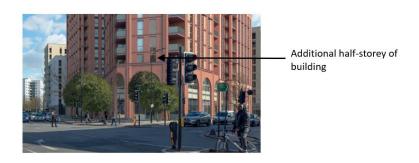
Application by way of a further s.73 Application. Their statements in this regard are that they are 'testing' a further 3 additional floors to be added to the tower Block A.

The above is stated by LMS because:

 The new architectural images that have been produced by London Square and used for public consultation to garner support or comments for their further (future) proposal to increase the height of tower Block A by an additional 3-storey levels includes the following image:



2. The above image appears to show a ground, first and second floors followed by 14 floors of residential accommodation and then two set-back roof levels – 18 levels in total <u>above</u> ground floor level or 19 floor levels in total assuming the basement floor remains unaffected. However, there is also a further half-storey level (apparently) shown in the image above which is not immediately evident – between the top of the second floor and the start of the third floor there is a 'half level' of glazing shown as noted below:



This half-storey level does not appear to be included on the drawings that accompany Application DC/22/126997 as shown on the Eltham Road elevation shown overleaf:



If indeed this is not an addition of a half-storey and is indeed a full storey of building then the new image of the increased height of tower Block A actually shows a 19-storey building excluding the basement or a 20-storey building including a basement. If the current Planning Approval allows for 'the construction of buildings up to 15-storeys (including basement level)' then the proposed additional height to tower Block A is actually one of 5-storeys to the above ground aspect of the works not 3-storeys.

It is of course very possible that London Square are aware of the above issues and are seeking by way of Application DC/25/140113 to remove the text 'the construction of buildings up to 15-storeys (including basement level)' such that the apparent error in the number of currently granted floors will then fall in their favour as the only documentation that would then show the number of actual floors if DC/25/140113 is approved are the plans and elevations of DC/22/126997 which currently show a basement level, a ground floor level and 14 levels of accommodation to tower Block A, so the Developer as a minimum gets an actual 16-storey building (including basement) at the very least. The apparent error in the number of floors shown in the new architectural image of tower Block A is to our mind one of incompetence of a CAD visualiser rather than a purposeful fraud by London Square.

Point 19 - Lastly, if we were to wish to develop a new 3-storey building, other than by way of permitted development rights, we would be expected to submit a Planning Application because it would be a material change to the neighbourhood within which it would sit whether it was a new-build or the replacement or enhancement of an existing building. The T&CP Act, 1990 simply requires this to be done to be lawful. If we were to complete the construction of a 15-storey (including basement level) residential tower block in a setting where it clearly exceeded guidance on maximum building heights and we then sought to construct a further 3-storeys of residential units above it, then we would again fully expect to submit a new Planning Application because of the materiality of the change proposed. To that end it seems clear that the proposed change to remove the text '15 storeys (including basement level)' to then make way for a new s.73 Application is in itself a material change.



In conclusion it is fully accepted that issues can always arise after a planning permission has been granted, which require modification of the approved proposals. Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 may need to be submitted. Where less substantial changes are proposed, there is the option of a section 96A application to vary the issue(s) at hand.

There is no statutory definition of a 'non-material' change to the granting of a Planning Permission because it very much depends on the nature and context of the overall development scheme. An amendment that is non-material in one context may be material in another. However, it will be essential that the London Borough of Lewisham is entirely satisfied that the amendment sought by London Square is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990. LMS have shown above by looking at many different aspects of the proposed development works, that such change as will emanate from the removal of the words 'up to 15-storeys (including basement level' will be material changes to the granted permission DC/22/126997 and as such Application DC/25/140113 should in our view be rejected by LBL.

Michael Haste BA(Hons) DipArch(Dist) MSc(ConstrLaw) Retired Architect On behalf of the Lee Manor Society

6th June 2025

(OVERLEAF - Basic Sightlines Study)

