

Dorchester Court, Herne Hill, London SE24 9QX

**Objection by the Herne Hill Society to applications
20/01200/FUL and 20/01201/LB**



Core Objection

The applicants Manaquel present the applications on the basis that the new development, in the form of sixteen penthouse flats built on the roof of Dorchester Court, a designated heritage asset, and eight townhouses on the site of the Dorchester Court garages, does not conflict with Lambeth's planning policies. That contention is demonstrably wrong. Manaquel fail to make clear that their applications are for "enabling development" and need therefore to be assessed in the light of principles contained in the National Planning Policy Framework (NPPF) and the policy published by Historic England in *Enabling Development and the Conservation of Significant Places* (2012). The applications fail, in substance and form, to comply with such principles and policy, as summarised in "Key points to the objection" below.

A detailed analysis is set out at Sections 1-6 below.

The applications should therefore, we respectfully submit, be refused.

Key points to the objection

- The applications conflict with Policies Q20, Q2, Q11, Q14 and EN1 of the Lambeth Plan.
- Permitting these applications will not secure the long term future of Dorchester Court and will not secure benefits that outweigh the negative effect of breaching established planning policies.
- No section 106 agreement is attached to the application. There needs to be a legally binding agreement between Lambeth Council and Manaquel which sets out in detail the repairs Manaquel agree to carry out for the total restoration of Dorchester Court. Without it, there is no obligation on Manaquel to start let alone complete the work. Given the historic failures of Manaquel over decades to address the repair of the building the need for this is all the greater.
Neither is there any other form of legally binding undertaking that obliges Manaquel to complete the repairs before marketing the new residences. These are basic safeguards for ensuring repairs are actually carried out.
- There is no detailed schedule of repairs. There is a description of the problems and possible repairs are listed, but this is very different from a written agreement to carry out a detailed schedule of repairs.
- Details of how the new penthouses will impact on the structure of Dorchester Court are absent from the application. There are no structural drawings to show how the penthouse extensions will impact on the historic host building (now some 85 years old) and no calculations showing the condition of the foundations. We understand these could be compromised and therefore likely to be incapable of taking the weight of the proposed extra storey. That parts of the building are already compromised can be seen in the evidence of pervasive use over many years of timber props.

- Given Manaquel's historic record in terms of maintenance of Dorchester Court, our fear is that work will start, the foundations will be found to be inadequate, the buildings will be structurally compromised and an application will then be made to demolish the buildings as there will not be enough profit from the development to repair them.
- There is no adequate detail given about the materials intended to be used for the town houses and penthouses. There are references to the penthouses being "prefabricated" which suggests limited quality. The original building is not prefabricated, so no additions to it should be prefabricated. The applications are lacking a schedule of proposed methods and materials as required by Lambeth in Listed Building Consent (LBC) applications..
- No plans and drawings submitted with the LBC application are drawn to a scale larger than 1:100. Hence they fail to comply with Lambeth's requirements in LBC applications, namely scales of 1:50, 1:10 and 1:5, depending on the nature of the subject matter.
- In the Planning Statement, Section 4.5, which details what is said to be outcome of meetings with Planning Officers, it is stated: "An overarching principle of needing to avoid the highest specification, and therefore costly, new build design, but rather a design which could be modern but made reference to and was sympathetic to the original design of the estate and was not 'gold plated'." This is not a standard consistent with the very high standard to which Dorchester Court was originally built. Neither is it consistent with securing the long-term future of the building, an aim emphasised by Historic England.
- A Financial Viability report is relied on for showing that the construction costs of repairing Dorchester Court and building penthouses and townhouses will exceed the return from selling the new residences once built. However, no account is taken of the fact that repair of Dorchester Court will substantially increase the value of the old flats. It is understood that more than half of these flats are held on short-term tenancies, and thus capable of termination by the owner. The increased sale or rental value of such flats should be brought into account.
- No details are given as to how in future Dorchester Court will be managed in a way to avoid the problems of maintenance that have plagued it for several decades and seen it placed on the Heritage at Risk Register.
- There is nothing in the application to show what steps are proposed in terms of active monitoring by Lambeth of the implementation of the development.
- No detail is given of how or the terms on which residents will be accommodated during restoration works and their status when restoration is completed. In the long-term safeguarding of an inhabited heritage asset the goodwill of occupants is an important factor.
- The long-term future of Dorchester Court, for the building and its occupants, requires proper consideration of fire safety. Currently there are virtually no cars parked along the side passages, but the proposed development expects them to be fully occupied by new residents of the new penthouses and townhouses. This will seriously compromise fire engine access. The access width beside parked cars is 2.5m. The minimum width for fire engine access is 3.5m.
- The applications fail to take proper account of the serious detriment to Dorchester House, the neighbouring listed building and part of the original design scheme, also harm to the amenity of locally listed buildings The Quadrangle and 32 Herne Hill, contrary to Lambeth Plan Policies Q20, Q2 and Q14.
- The addition of penthouses on all eight blocks conflicts with the lawful use of the roofs as outdoor amenity space, as certified by Lambeth's notice dated 11 February 2019, and also goes against Lambeth Plan Policy ED1.
- The professed aspiration to improve the public realm and landscape amenity is largely lost through the retention of parking in the central court/garden (a fact that is not shown on the application drawings). Cars could be parked on the garages site were it not for the proposed townhouses.

- In the interest of Lambeth's policy on "car free" development, there should no car parking in the front gardens of the townhouses.
- The proposed cycle storage provision for the proposed development is totally inadequate in view of Lambeth's policies on transport and sustainability.

1. Introduction

- 1.1. The applicants' Heritage Statement refers to Dorchester Court being built by "a Mr Morrell". The builders of Dorchester Court were in fact twin brothers Cyril Herbert Morrell and Stanley Charles Morrell, born in 1908. The site of Dorchester Court was acquired by the Morrell brothers' company, Morrell (Builders) Limited, incorporated in 1932, a company that took over the Morrell family building business. To allow for the rapid growth in their building activity in South London the brothers' working capital was increased in 1935 with the incorporation of Morrell Estates and Development Co Ltd with a share capital of £450,000. The Morrell brothers became joint managing directors of the company. The building of Dorchester Court started at this time and is thought to have been completed in 1936.
- 1.2. The Morrell brothers did not merely plan one of the largest mansion block developments of its time in South-east London. They saw the eight blocks of flats as part of a broader project, one that combined highly contemporary architectural idiom with the more traditional styles favoured by suburban building in the post-World War I era. The result of this ambitious project is still there today, largely unchanged. Dorchester Court cannot be looked at in isolation. It needs to be seen in the context of the rest of the project, that is the detached houses the Morrell brothers built in Dorchester Drive. With one exception (no. 8) all the houses in the road were designed by the architects Leslie H Kemp and Frederick E Tasker. Only one of the original houses has gone, that known as "Tudor Stacks", a large "Tudorbethan" house at No. 1 Dorchester Drive, demolished in 1975 and replaced by 40 retirement homes (flats) for older people. The original Tudor Stacks was envisaged by the Morrell brothers as a home for their mother. At the opposite end of the road they built "Dorchester House" (No. 5 Dorchester Drive, now Grade II listed), which they envisaged as a home for their own use. This house has been described as "one of the finest private houses built in South London in the 1930s" (Edmund Bird, *Lambeth Architecture 1914-1939*, 2012)
- 1.3. It is important to note that Kemp & Tasker chose for this house the same *moderne* style that was used for Dorchester Court. This links the two buildings in a way that is not shared by other buildings in the road and emphasises the need to look at the two building in conjunction. At the same time, the more conservative style for those other buildings (with the marked exception of No. 10 Dorchester Drive) should be seen in conjunction with the Quadrangle (1911-12, with a rear wing built in the early 1920s), modelled on the look of timber-frame Tudor precedents. The Quadrangle borders the Dorchester Court site to the south. It is locally listed and is currently under review for national listing by Historic England.
- 1.4. Also bordering the site to the south is the distinctive No. 32 Herne Hill, a modernist house built in 1936 and locally listed by Lambeth. On the other side of Herne Hill, a short distance NE of Dorchester Court is the Casino/Sunray Gardens Estate, an important example of social housing built on garden suburb principles, designed by and built in 1920-22. The estate is a

conservation area within the LB of Southwark. No mention of the estate is made in the application. Opposite lies 10-12 Herne Hill, a highly unusual pair of semi-detached house, locally listed and, in contrast to Dorchester Court, currently undergoing major restoration by Lambeth Council, owners of the building. They are a very rare surviving example of the many villas and mansions that were built as homes for a prosperous merchant class on Denmark Hill and Herne Hill in the Victorian era.

It will be seen that the area of Herne Hill that contains Dorchester Court comprises a built environment with diverse character that provides significant heritage value and valued local distinctiveness.

2. Assessing the significance of Dorchester Court

- 2.1 Para 190 of the NPPF requires local authorities “to identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset)”.
- 2.2 Dorchester Court, listed Grade II in 2004, provides a very good example of architecture with its roots in the 20th-century modern movement and with design characteristics in the art deco tradition. As the Historic England listing description points out it is “a complete and little altered development” and “the ensemble remains exceptionally well detailed outside”. Buildings by Kemp & Tasker, best known for their cinemas, preserved in their original state are not numerous. A group of mansion blocks by these architects is unique. And in terms of the Herne Hill area there is no comparable mansion block. Dorchester Court’s sleek style, scale and position at the brow of the major road that runs through the area give it a particular prominence that probably few if any other buildings in Herne Hill can claim. It stands close to other buildings, some part of the original building scheme, others not, but all coalescing in a locality with high heritage value.

3. Conservation of the heritage asset and the National Planning Policy Framework (NPPF)

- 3.1 Throughout the documents submitted with the application there runs the argument that the addition of sixteen penthouse flats and eight townhouses is justified because their construction has to be seen in conjunction with and will be part of the long overdue restoration of Dorchester Court. Thus, for example, the Heritage Statement says (p.42):“The proposed development will be restoring a run-down heritage asset to its former glory. The scheme as a whole therefore secures the long-term optimum viable use of the asset, and this itself should be considered to be a public benefit, as specifically required by the NPPF.” Similarly, the Planning Statement (para 6.33), after referring to the need under the NPPF for LPAs to assess the significance of heritage assets, goes on to say : “a fundamental aspect of proposals seeks to enhance the site to such an extent it no longer warrants inclusion on the Heritage at Risk Register. By extension, the implementation of proposals would also represent an enhancement of the settings of those heritage assets identified as relevant, thus being justifiable in terms of heritage benefit.”

- 3.2 In our submission, the argument is (a) a misapplication of NPPF principles and (b) if the application is to be regarded as one for an “enabling development” it is defective in substance and form (see Section 4 below).

NPPF paras 192 and 193 state:

192. In determining applications, local planning authorities should take account of: a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) the desirability of new development making a positive contribution to local character and distinctiveness.

193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

- 3.3 “Conservation” that positively contributes to the making of sustainable communities including their economic vitality or to which great weight should be given is the preserving of the heritage asset with the features that make it a heritage asset. It is not an invitation encouraging changes or additions to the heritage asset, when they will harm the asset and damage its heritage value. Funding restoration of a heritage asset financially through making changes or additions cannot be construed as a purpose behind these NPPF provisions, as the applicants seek to argue.

NPPF para 194

194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of: a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

- 3.4 It is beyond question that the significance of Dorchester Court in terms of heritage value will be harmed by the addition of another storey on each of the eight blocks. It cannot reasonably be suggested that Kemp & Tasker’s design was in some way imperfect and that such an addition now remedies that defect. The applicants’ Heritage Statement, in referring to the addition of the penthouses, uses phrases such as “the clearly contemporary – yet referential – architectural style, design and materiality ensures a legibility of phasing across these residential blocks is achieved. As such, it is considered that proposals clearly enhances the ability to appreciate the value of the heritage asset”(para 7.48). Similarly the Planning Statement (6.72): “The contemporary approach to roof extensions demonstrably ensures a legibility of phasing across the site is achieved with contemporary finishes ensuring the existing historic value of the heritage asset is ultimately framed, highlighted and appreciated.” This is mere sophistry. Adding a storey imposes something that was never part of Kemp & Tasker’s vision. The value of that vision does not need an additional storey for it to be “appreciated”. The extent and scale of such addition merit the description “substantial

harm". There is therefore an absence of the "clear and convincing justification" required by the NPPF.

- 3.5 In connection with the proposed addition of a storey on the roofs it should be particularly noted that Kemp & Tasker designed the blocks with access to the open rooftops for residents to enjoy as a communal amenity. Design and function are inter-dependent. The design is not only in the same spirit as the provision of generous balconies but also in that of a broader spirit of the times, that looked to larger housing developments to provide communal facilities in the interests of public health and well-being. The proposal to build on the roofs and remove some 80% of the communal amenity conflicts directly with this aspect of the building's heritage and practical value.
- 3.6 The applicants do not attempt to argue that there will be no harm to the heritage asset, but seek to minimise the gravity of the harm, in particular by asking the LPA to measure such detriment against the benefit of having a seriously dilapidated building restored after decades of neglect – that is, neglect on the part of the applicants themselves. The repair of Dorchester Court is the responsibility of the applicants as owner. Failure to keep a listed building in repair exposes the owner to sanctions that can be imposed by the local authority using powers under the Planning (Listed Buildings and Conservation Areas) Act 1990. We submit that the "clear and convincing justification" required by the NPPF cannot be construed as including the justifying of actions that are the consequence of neglect by an applicant who then seeks planning permission or listed building consent. Neither does NPPF para 194 justify harm to the heritage asset through the applicants' impecuniosity (if that is the case) and therefore the necessity they allege for adding sixteen penthouses and eight townhouses whose sale would fund or contribute to restoration of the heritage asset. The particular financial status of the owner responsible for a heritage asset cannot be a justifying factor within para 194. If it were, it could act as an incentive to owners to act irresponsibly and later seek to retrieve the situation, but at the cost of harm to or loss of heritage assets and to their own financial advantage, whether by new development affecting heritage assets and/or by avoiding the imposition of statutory sanctions by the LPA.

NPPF para 191

Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision.

- 3.7. This provision should be particularly noted and supports the NPPF being interpreted as including the purpose to prevent abuse in the planning process, in particular the running down of a heritage asset in order to obtain planning advantage. We submit that where, as in the case of Dorchester Court, there has been a long history of a deteriorating building, the LPA should examine closely the cause of and responsibility for such deterioration.

In this connection we draw attention to the opinion of Jonathan Coleman (MEng, CEng, MStructE), referred to in the Dorchester Court Residents Association's submission. Mr Coleman cites NPPF para 191 and states: "Based on that it is our opinion that the

deteriorated state of the buildings at Dorchester Court may not be a valid justification to carry out a development to fund the necessary repairs.”

NPPF para 195

195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: a) the nature of the heritage asset prevents all reasonable uses of the site; and b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d) the harm or loss is outweighed by the benefit of bringing the site back into use.

- 3.8 As stated above the proposed development will, through its extent and scale and because of the value of the heritage asset and its setting, lead to substantial harm and consent should therefore be refused. It is not disputed that the restoration of Dorchester Court would achieve substantial public benefits, but it is not “necessary” to achieve the benefits through new development. The conduct of the applicants in allowing the degradation of Dorchester Court and their impecuniosity (they argue that restoration can only be achieved through development) are not legitimate reasons for relying on development as necessary for the securing of benefits. As argued before, if such reliance were allowed the objectives of the NPPF would be frustrated and open to abuse. In any event these applications, when properly examined, do not achieve substantial benefits because (i) the restoration that they purport to offer is not enforceable; (ii) detailed information of the restoration work is insufficient; (iii) the standard to which it is said the restoration work would be carried out is not satisfactory; (iv) the addition of a storey on the roof of Dorchester Court, with no evidence as to the foundations of the building, could lead to damage to the rest of the building.

As to sub-paras (a)–(d) of NPPF para 195 it cannot be argued that all of these criteria apply. Dorchester Court is plainly capable of use, and is currently in use and will continue to be for the foreseeable future, regardless of the development proposed.

4. Enabling development – NPPF para 202

202. Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

The London Plan also adopts this test at 7.31A.

- 4.1 The applicants seek to present their proposal as one that does not conflict with planning policies (see Heritage Statement, para 6.6) and satisfies the conservation objectives in the NPPF. We say this is wrong and that in reality this application is a proposal for “enabling development” within NPPF para 202. It is important to recognise the true nature of the proposal, because as an “enabling development” application it introduces a need for the LPA to have due regard to the policy of and guidance by Historic England, in particular as contained in *Enabling Development and the Conservation of Significant Places* (2008).
- 4.2 In para 1.1.1 of the latter document “enabling development” is defined as: “development that would be unacceptable in planning terms but for the fact that it would bring public benefits sufficient to justify it being carried out, and which could not otherwise be achieved”.

Regard should be had to para 2.1.2 of the same document:

In relation to particular proposals, it was established in R (on the application of Young) v Oxford City Council CA 2003 JPL 232 that a local authority should first consider whether any proposed development would be acceptable, in planning terms, on its merits, as being in accordance with policy. If it is not acceptable because it would be in breach of policy, then it should be considered ‘as enabling development within the meaning of the [English Heritage] policy statement. That would involve a consideration of the policy statement and its application to the facts of the case.’¹

- 4.3 It should be noted that under policy Q18 in the Lambeth Plan (2015), repeated unchanged in the draft new plan, it is accepted that Lambeth are committed to “use established best-practice guidance from Historic England” and to “work in partnership with Historic England”.

Since the applicants dispute that the application would be in breach of LPA policy and that it is acceptable in planning terms on its merits, it is necessary to examine such policy.

5. LPA Planning Policy

Lambeth Policy Q20: Development affecting listed buildings will be supported where it would: (i) conserve and not harm the significance/ special interest; (ii) not harm the significance/setting (including views to and from); (iii) not diminish its ability to remain viable in use in the long term.

These provisions are repeated in the new draft plan with the addition of the words “iv) is justified and supported by a robust Heritage Statement.”

- 5.1 To argue that the addition of penthouse flats “conserves and does not harm the significance/special interest” of Dorchester Court is, we submit, irrational. It plainly damages the building’s significance and special interest and does so substantially. We set this out more fully in the section above considering the NPPF. Also to be noted here is the provision

¹ Mynors, C, *Listed Buildings, Conservation Areas and Monuments*, 4th edition (2006, London: Thomson), p 490, quoting [2002] 3 P.L.R. 86 CA

in the London Plan 7.31A, which reiterates the wording of the NPPF: “Substantial harm to or loss of a designated heritage asset should be exceptional”.

- 5.2 Policy 7.8D of the London Plan should also be considered:

Development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.

Dorchester Court was designed and built in a particular architectural idiom and one whose distinctiveness marks it out as an outstanding example of the interwar period. The addition of a storey in a different idiom and of different materials and with different architectural details damages the original and does not conserve it. The applicants seek to justify it as “respectful” or “referential”. We disagree.

- 5.3. The removal of some 80% of the communal amenity space on the roofs, a use expressly acknowledged in Lambeth’s decision given under the application 18/04692/LDCE, should be judged in the light of Policy ED1:

Lambeth Policy ED1: Development which would involve the loss of existing public or private open space will not be supported unless at least one of the following tests is met: (i) Replacement open space of equivalent or better quality and quantity is provided within a suitable location in the local area. (ii) In the case of housing estate amenity areas, significant regeneration and community benefits would be achieved that could not be achieved in any other way, and appropriate compensatory provision for the loss of open space is made, including improvements to the quality of the remaining open space.

The compensatory provision proposed is inadequate and therefore inappropriate. It is not of an equivalent or better quality. The garages and their yards also provided extensive amenity space, a fact that is ignored in the applications. The garages site offers significant opportunities for the restoration of communal amenity, but the proposal to build townhouses on the whole of the site eliminates any such opportunities.

- 5.4 There is a marked failure in the application to consider the effect of the addition of another storey and the building of townhouses on the neighbouring listed building at 5 Dorchester Drive (Dorchester House). A well-preserved private house of this era, built in moderne style and with design details of exceptional quality is something of considerable rarity in Lambeth. It is also unusual in retaining its original large garden. The impact of the development on this heritage asset is barely if at all considered in the applicants’ documents. The proposed “Wireline View” at p.133 of the Design & Access statement is wholly inadequate, because it is taken from the street and not from Dorchester House itself. (We are able to say that at no time was a request made to enable photographs to be taken.) There is therefore no visual aid to help to judge the effect of the additional storey viewed from Dorchester Court.
- 5.5 Similarly, there is nothing to help judge the effect of the townhouses. It cannot be doubted, however, that the effect will be marked, not least the impact of the townhouses. Since they maximise use of the garages site they are built right up to the boundary with 5 Dorchester

Drive (Dorchester House) with a wall on its NE boundary extending to 9m in height, three times the height of the present garages wall. It will be an over-dominant presence. Both Dorchester House and The Quadrangle enjoy large and remarkably secluded gardens, an echo of the garden that played such an important role in the life of John Ruskin (shown at 5.1.2 of the Design & Access Statement. Ironically, most of the Ruskin garden today lies beneath the garages.) The proximity and height of the 3-storey townhouses will mean significant overlooking not only of Dorchester House (listed) and The Quadrangle and 32 Herne Hill (both locally listed) but also of their gardens.

- 5.6 The townhouses do not merely breach Lambeth Policy Q20; the harm to visual amenity and unacceptable levels of overlooking go against Lambeth Policy Q2 (Amenity). Development of the garages site also needs to be seen with particular regard to Policy Q14 (Development in gardens and on backland sites), under which backland development will only be supported where: “(i) the replacement buildings are sited to maintain or improve upon existing neighbour relationships; (ii) any increases in height (in relation to existing development on the site) will not have any adverse impact; (iii) forms and heights remains subordinate to its built context”. We submit that the location, height and scale of the townhouses fail to satisfy these criteria.
- 5.7 Also relevant here is the question of consistency in planning decisions. The Planning Statement states (para 3.12): “There is no planning history relevant to neighbouring property that is relevant”. In fact an application (ref. 08/01323/FUL) to build a 2-storey residence in the garden land of Dorchester House was considered in 2008 and was rejected as having a “dominant appearance to the detriment of the setting of a listed building and the character of the area”. We submit that the same approach is appropriate today, having regard both to Dorchester House and also the two neighbouring locally listed buildings.
- 5.8 Since the applicants contend that the development cannot be regarded as in breach of LPA policy but should be seen as acceptable in planning terms on its merits, it is also necessary to consider, briefly, other aspects of that policy. With regard to the addition of a storey on Dorchester Court, we say that the primary test is whether the proposal satisfies the criteria in Policy Q20. But if it is thought necessary to consider the proposal in terms of Policy Q11 and Buildings Alterations and Extensions SPD (2015), we submit that the principles of subordination and protection of the design integrity of the host building can only lead to the conclusion that the proposal breaches those principles. Especially to be noted in Policy Q11 is sub-para (m): “Roof additions and mansards will not be supported where they would harm the architectural integrity (building form and design integrity) of the original building or its group.” This principle is repeated in the new (draft) version of the Lambeth Plan, subject to the word “permitted” being substituted for “supported”. We submit that adding a floor to Dorchester Court plainly harms the architectural integrity of the original building.

6. Historic England: Enabling Development and the Conservation of Significant Places (2008)

- 6.1 For the reasons set out above the application should be seen as contrary to established planning policy. It should therefore be classified as enabling development and be judged by reference to the policy provided by Historic England for enabling development applications.

6.2 Historic England define the policy for enabling development thus:

Enabling development that would secure the future of a significant place,² but contravene other planning policy objectives, should be unacceptable unless:

- a. it will not materially harm the heritage values of the place or its setting*
- b. it avoids detrimental fragmentation of management of the place*
- c. it will secure the long-term future of the place and, where applicable, its continued use for a sympathetic purpose*
- d. it is necessary to resolve problems arising from the inherent needs of the place, rather than the circumstances of the present owner, or the purchase price paid*
- e. sufficient subsidy is not available from any other source*
- f. it is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the place, and that its form minimises harm to other public interests*
- g. the public benefit of securing the future of the significant place through such enabling development decisively outweighs the disbenefits of breaching other public policies.*

The policy then goes on to state:

- a. the impact of the development is precisely defined at the outset, normally through the granting of full, rather than outline, planning permission*
- b. the achievement of the heritage objective is securely and enforceably linked to it, bearing in mind the guidance in ODPM Circular 05/05, Planning Obligations*
- c. the place concerned is repaired to an agreed standard, or the funds to do so are made available, as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation*
- d. the planning authority closely monitors implementation, if necessary acting promptly to ensure that obligations are fulfilled.*

Included in statements by Historic England about the Policy are the following:

Section 1: Enabling development is development that would be unacceptable in planning terms but for the fact that it would bring public benefits sufficient to justify it being carried out, and which could not otherwise be achieved. The key

² Footnote provides "Significant place is used in this statement, in succession to 'heritage asset', as shorthand for any part of the historic environment that has heritage value, including but not limited to scheduled monuments and other archaeological remains, historic buildings (both statutorily listed or of more local significance) together with any historically related contents, conservation areas, parks and gardens either registered or forming the setting of a listed building, and registered battlefields.

public benefit to significant places is usually the securing of their long-term future. To minimise the need for enabling development, local authorities should monitor the condition of their significant places and where necessary use their statutory powers to limit deterioration.

Section 3: Where the appearance of enabling development is crucial to its acceptability - as it normally is - outline planning applications are not appropriate. Full information is necessary not just to demonstrate physical impact, but particularly to establish and quantify need, since the financial considerations involved are fundamental to the decision. Local authorities are empowered to demand it. Enabling development is a type of public subsidy, and so should be subject to the same degree of financial scrutiny, transparency and accountability as cash grants from public sources.

Section 7: Success depends on the benefits of the proposal being properly secured. Legally enforceable arrangements must be put in place to ensure that the commercial element of the development cannot be carried out or used until the heritage benefits have first been delivered, or there is a bond in place to ensure performance. This will normally require a 'section 106 agreement', which, where appropriate, should also secure management arrangements to protect the significance of the place in the long term.

Section 8: The implementation of the development, and the delivery of planning obligations and discharge of conditions, needs to be actively and formally monitored by the local planning authority. Breaches of obligation or condition must be addressed as soon as they occur. When the scheme is complete, the outcome should be compared with expectations, and the results should inform future decision-making.

- 6.3 We urge Lambeth to give careful consideration to the policy and guidance on the policy, both in the interest of conserving Herne Hill's heritage assets and historic environment and that of being seen to act lawfully. Failure to classify this application as an enabling development and disregard of the Historic England policy and guidance would, we submit, expose the local authority to legal challenge in its decision-making process.
- 6.4 It is beyond the scope of this submission to address all the very detailed guidance that accompanies the Historic England policy. It must suffice to say that the application signally fails to satisfy a rational and proportionate application of the policy and guidance for the reasons that are set out under "Key points to the objection" at the beginning of this document.

