Appeal Decision

Site visit made on 16 March 2009

by B.S.Rogers **BA(Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
28 April 2009

Appeal Ref: APP/B4215/A/09/2093756
103 High Street, Manchester M4 1HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Richard Goodall against Manchester City Council.
- The application Ref: 086418/JO/2008/C1 is dated 2 April 2008.
- The application sought planning permission for use of Unit 6 (ground floor) for retail purposes (use class A1) without complying with condition 6 attached to planning permission ref: 081110/FU/2006/C1, dated 27 December 2006.
- The condition in dispute states: *The permission granted shall be personal to Richard Goodall and on Richard Goodall ceasing to occupy the premises the use for which the permission is hereby granted shall be discontinued*.
- The reason given for the condition is: *In granting this permission the City Council as local planning authority has had regard to the special circumstances of the applicant*.

Decision

1. I allow the appeal and grant planning permission for the use of Unit 6 (ground floor) of 103 High Street, Manchester M4 1HQ for retail purposes (use class A1) in accordance with the application Ref: 086418/JO/2008/C1 dated 2 April 2008, without compliance with condition number 6 previously imposed on planning permission Ref: 081110/FU/2006/C1 dated 27 December 2006 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following new condition:

   The premises shall be used for the sale and display of art work and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Main issue

2. The main issue is whether the condition in question is needed to contribute to the successful regeneration of the area.

Reasons

3. The appeal site is in the Smithfield Conservation Area, part of the Northern Quarter of the City Centre, an area of mixed commercial, cultural and residential uses, which is undergoing regeneration. The appeal property is one of 6 ground floor units in a modern, mixed use development comprising various

commercial uses at ground floor, with flats above. This was intended as a model scheme to stimulate mixed use regeneration. The nature of the development appears consistent with the regional strategy to achieve sustainable communities and, more locally, with the Council's regeneration initiative for the area, the Smithfield Master Plan, and with UDP Policy RC3, which encourages compatible mixed uses.

4. The original permission for this unit (Unit 6) was for Class D1 Gallery use, a use which allows for the display of works of art (otherwise than for sale or hire). The condition in question arose because the Council quite reasonably agreed with the appellant's wish to sell, as well as display, the works of art. The removal of the condition would have the effect of allowing an unfettered A1 retail use in the premises. This is unlikely to provide the same degree of diversity as a use which is related to the growing cultural interest of the area, an important part of the character of the Conservation Area.

5. Whilst I agree with the Council's broad intention to impose the condition in question, I find it hard to see how it can continue to be met by a personal permission. For example, there would be nothing to prevent the appellant opening up any form of retail store if he so chose. I therefore find the personal condition to fail to achieve its purpose and accordingly to be unnecessary and will allow the appeal. However, in order that the development remains consistent with the regeneration initiative for the area, I shall impose a replacement condition which would have the effect of limiting the use of the premises to the display and sale of works of art.

6. Any concerns raised about the impact on the living conditions of neighbouring residents should be allayed by the retention of the existing condition restricting hours of opening.

B.S.Rogers

Inspector