GROUNDS OF APPEAL

25 Park Street Cheetham Manchester M3 1EU

<u>Summary</u>

1.1 The submitted planning appeal seeks change of use of the vacant premises to a private members health spa (Sui Generis). The proposed use might commonly be referred to as a swingers club; the proposed use is not a massage parlour. The applicant proposes to open during the evenings Monday to Friday and from midday on Saturday and Sunday.

1.2 The information below and submitted by LR Law justifies the proposal against prevailing current planning policies and taking into account material considerations.

1.3 The consideration by the Council of other leisure uses in the same area are also material considerations. Further material considerations are found within the attached and noted appeal decisions, those cases involving leisure uses being granted permission in employment areas/buildings and also uses involving consenting adult activities.

1.4 The Council Refused the Application for the following reason:

> *"The use of 25 Park Street, as a private members health spa (Sui Generis), is not compatible with the regeneration aspirations for Strangeways/City fringe and will bring little activity and vibrancy to the area. This is considered to be harmful to the character and ongoing regeneration of the area. In addition, the use will afford little natural surveillance to the area and will attract and contribute to crime and anti-social behaviour, along with the perception of such issues, which will further undermine the areas successful regeneration. The use is therefore contrary to policies SP1, EC4 and DM1 of the Manchester Core Strategy (2012), saved policy CC10 of the Unitary Development Plan for the City of Manchester (1995), The Strangeways Local Plan (2008), The North Manchester Strategic Regeneration Framework and the National Planning Policy Framework."*

1.5 We aim to demonstrate below, largely with arguments already presented to the LPA, that the proposal can be an acceptable use within the urban area and does accord with the policy framework. There is an unmet demand for this type of leisure activity. The pursuit of such a leisure activity should be catered for in a modern

society where people can be safe. Furthermore the proposal would bring people (couples) to the area and natural surveillance would be increased in the street.

Background & Planning History

2.1 The site, along with most other sites in the area, has not been in any productive economic use. The attached photographs from Bing Maps show the appearance of the surrounding area. Swathes of cleared land are given over to surface car parking.

2.2 There is an established massage parlour across the road from the application property. The planning history of that property, 24 Park Street, does not show a previous planning permission for the use. However, the fact it has operated for a period in excess of ten years shows the minimal impact that use must have had on the surrounding area. If there had been a negative impact the LPA would have taken planning enforcement action against the use.

2.3 For clarity the proposed use at 25 Park Street is not a massage parlour. Rather it is a private regulated and safe place for adults to meet like minded adults to participate in consenting legal liaisons (Swinging). Without a place like 25 Park Street such past times will be forced underground and will be unregulated and can put the participants at risk of criminal activity.

Site Location

3.1 Park Street is within a historical heavy and light industrial business area close to the City Centre. There are no nearby residential properties. Victoria mainline and Metrolink interchanges are a short walk from the application site. The area has a mixture of older brick built warehouse buildings many of which are empty, cleared vacant sites mainly used for surface city centre car parking and a handful of existing uses in small units. The application site and area around the site has been assessed by the City Council in their local plan document "Strangeways Local Plan, 2009":

> *"The area is characterised by low-grade public realm and in general a poorly built environment . This is particularly noticeable along the arterial roads through Strangeways, which give the impression of a 'back door' entrance to the city centre. The issues around the degraded public realm are exacerbated by fly-tipping and the litter generated by businesses . Due to its proximity to the city centre the area is popular for on-street commuter parking. Theft from vehicles presents a major problem." (Page 20, Vision and strategy for Strangeways,* Strangeways Local Plan, 2009)

3.2 It is clear the area around the site has been in decline with little traditional industrial activity occurring and no new industrial activity evident. Manchester City Centre has been expanding in all directions over the last twenty years. The Strangeways Local Plan proposes future expansion into the defined City Centre Fringe, where the application property is located. The images within enclosure 1 of this report show the application site in relation to the surrounding area. The site is an edge of centre location for the purposes of policies within the NPPF.

Appraisal

4.1 The main issues appear to be whether the use of the site is appropriate in principle and whether the use will lead to environmental and social problems in the local area as claimed by the LPA. The environmental and social issues are linked to the principle of the re-use of the building. The appraisal will consider the economic aspects of planning policy, moving onto the fear of crime and disorder and then turning back to land use policy and potential for time limited temporary permission.

4.2 The most recent use, some three years ago, saw the first floor used as an internet centre and the second floor being used as an actor agency. The 2 floors have been empty for over 3 years. The site has been marketed for the past few years.

4.3 This is one of the few sites in this area where development, aside from demolition, has been proposed in recent years. The applicant's propose a use that will create secure administrative and cleaning employment once the use is established. The economy has been depressed and the area around the site has according to surveys of the area as a location for business shown several challenges as noted and undertaken by the Council as part of the Strangeways Local Plan. The following challenges are noted:

- *"Crime, mainly in the form of vandalism, break-ins to cars and premises, street crime and robbery. Degraded environment and poor public realm leading to fly-tipping in some areas. The overall perception was that Strangeways has missed out on investment and the area remains largely untouched by the regeneration of the city centre" (Page 26, Employment and Economy Section, Strangeways Local Plan, 2009).*

4.4 The applicant intends to create employment refurbishing the building and proposes to create long term jobs running the private members health spa. A significant investment in the building which could benefit employment in the local area. Whilst only a relatively small number of jobs are created, they are nevertheless

new jobs, there will also be people attracted to the area who will themselves help to police the street.

4.5 Objections have been lodged by Council departments on the basis of a proliferation of such uses (and this proposed use) attracting the wrong type of activity/people to the area which is claimed will increase crime and littering. The opposing and positive view for the application would be to consider that more people coming and going along the street and viewing the street from the building and entering and leaving the building will greatly enhance natural surveillance. Natural surveillance is noted by the Strangeways Local Plan as lacking in the area at present:

- "*There is low pedestrian footfall in the area and therefore little natural surveillance to deter thieves and those who commit environmental crimes*" (*Page 36, The Physical Environment Section, Strangeways Local Plan, 2009).*

4.6 The Guide to Development in Manchester offers advice and policy about natural surveillance:

> *"Informal surveillance should be promoted. Developments should promote informal surveillance of the street. Buildings fronting streets, so that pavements are overlooked by windows and entrances, are encouraged as they increase security for street users. Overt security measures such as roller shutters create an increasingly intimidating environment on night time streets and alternative solutions will be encouraged. Where shutters are needed, their design and visual impact must be considered, to ensure that they do not reduce on-street security for pedestrians and cyclists, nor adversely affect the appearance of the street. Additionally, the use of shutters during the day, or obscured glazing on shop windows, will be discouraged so as to avoid dead and inactive looking frontages."* (Paragraph 8.4, Guide to Development in Manchester, SPD).

4.7 Although the use does intend for most upper floor windows to be shuttered the staff room at first floor level will overlook Park Street. In addition CCTV of the entrance and environs of the premises will be operated by staff and recorded and stored for 30 days. The applicant has made improvements to the street outside the premises advising he has cleaned the street of litter and helped reduce street crime and criminal activity. Increased activity in the street, from people entering and leaving the premises, will help to deter criminal activity.

4.8 Customers of the premises will feel secure in the premises and will feel secure travelling to and from the premises with CCTV and improved surveillance of

the street. Such issues were considered by GMP Design for Security in their response suggesting the success of the operation rested upon the effective management and a management plan. If new businesses are deterred from opening natural surveillance and additional CCTV surveillance will not happen, meaning crime levels will remain high. LR Law have provided a robust management plan for the operation of the use.

4.9 Two appeal decisions are relevant to this appeal first a private by appointment only club and the second a massage parlour. Both the appeals were subject of objections relating to the fear of crime linked to the operation of those businesses; those concerns were unfounded by the Planning Inspectorate.

4.10 The first appeal, at a site in Gateshead, was allowed because the Planning Inspector decided it would not have a harmful impact on the character of the surrounding area or a detrimental impact upon neighbours by reason of fear and apprehension. The Inspector observed that the surrounding area comprised a range of commercial uses including a number of late night food and drink uses. The inspector accepted that there was a substantial amount of fear and apprehension on the part of a considerable amount of people living in the nearby residential area and elsewhere, but the majority of comments had been based on moral issues and were therefore not planning matters. On this issue he concluded that no substantive evidence had been submitted to justify the allegations that the change of use would attract undesirable persons, lead to undesirable activities or to an increase in crime. Consequently it was concluded that there was no substantive evidence to justify withholding planning permission on the grounds of fear and apprehension. Appeal reference available on request.

4.11 The second appeal related to a site on Liverpool Road in Salford. The council claimed that it would have adverse psychological effects on business confidence, by undermining the amenity and well being of neighbours and the users of a nearby community hall and park. However, the inspector noted that the activities would take place behind boarded up windows and no signage was proposed. The business advertised widely he noted and all customers had to have a pre-arranged appointment, preventing passers by calling in. Appeal reference available on request.

4.12 The above two appeal decisions show some similarities to the case of 25 Park Street where a fear of crime is noted by two consultees. The appeal decisions demonstrate the Planning Inspectorate consider development proposals on the basis of planning matters alone not suppositions. Two consultees (North Manchester Regeneration and Community Safety) advise crime in the area is high, this is backed up by the Strangeways Local Plan. If the application property remains vacant the

level of crime will not be reduced however with suitable management measures in place, as they are in place, including surveillance via technology and natural surveillance, criminal damage and other anti social behaviour in the street will be reduced.

4.13 In addition we suggest that the NPPF should carry a considerable amount of weight in assessing the proposal especially given the advice within paragraph 22 and 21 quoted below:

> *"Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities." (Para 22, NPPF)*

> *"Support existing business sectors, taking account of whether they are expanding or contracting and, where possible, identify and plan for new or emerging sectors likely to locate in their area. Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances" (Para 21, NPPF).*

4.14 The policy framework within NPPF has been set out to respond to market initiative and enterprise such as the proposal contained within this planning application. The evidence provided by the Council in the Strangeways Local Plan shows limited possibility of any alternative development occurring. Without alternative use of the building the site will not contribute to the street. The building would sit empty as with other buildings in the area.

4.15 The site is an edge of town centre location where leisure uses are considered appropriate. If the advice of NPPF is followed the decision maker will be able to look favourably at granting planning permission for the change of use from employment and leisure use to a private members club. There are two further very relevant appeal decisions that we also feel are material to the decision. Both decisions allowed development for leisure uses within existing employment areas, where the LPAs had claimed harm to existing employment and regeneration of the area.

4.16 A South Wales case (APP/V6945/C/13/2195941 – copy attached) concerns a retrospective case where a tanning salon had been opened in an employment area in a small unit. A local plan policy stated that the development of existing employment

land and buildings for any other purpose would not be permitted. The inspector remarked that the development plan policy objection would appear clear-cut. He pointed out, however, that the policy applied to industrial land and buildings whereas the permission granted was for a storage unit. Nevertheless, he found it appropriate to have regard to the overarching objectives of the policy which was to maintain a choice and variety of industrial land in order to promote employment growth. The plan explained that this was where industrial land was in short supply and conversely such land might be considered for development for retail and leisure activities where there was a surplus. The council accepted that a high proportion of the units on the estate were vacant. Moreover, the inspector accepted the appellant's view that her business offered economic activity where otherwise there might be none. He also accepted the council's proposition that the high level of vacancy reflected the economic situation and that it would be harmful if units were lost now which would not then be available to meet demand when matters improved. Granting a three-year permission, he concluded that there was a case to allow the use to continue in the interim pending the resurgence of the economy. A copy of the decision notice for APP/V6945/C/13/2195941 is provided in the enclosures.

4.17 The other appeal case is from a site at Unit 5, Gloucester Crescent, Heathpark Industrial Estate, Honiton, Devon, EX14 1DB where planning permission was granted for change of use to soft play based family entertainment centre (D2) (APP/U1105/A/07/2056318). The decision advises that the site is allocated as employment land and policies restrict the loss of employment unless no demand exists for employment land. The site had been empty for a year but there was no evidence of any marketing have been undertaken. The Inspector cast some critical comments that marketing and other options had not been explored before allowing the soft play centre. The Inspector did however examine the fundamental reason for the employment policies – "the encouragement of business activity and job creation". This also applies to the current application and situation in the Strangeways Local Plan area of Manchester. In the Honiton case the Inspector argued:

> "*Moreover, although the use does not fall within Part B of the Town and Country Planning (Use Classes) Order 1987, as amended, it would provide employment. The appellant's evidence indicates that 13 full and part time jobs would be created, which is apparently more than could arise from some uses currently permitted for the unit, such as a warehouse. The benefits of this employment creation must be weighed in the balance in determining the appeal*."(Paragraph 6 APP/U1105/A/07/2056318).
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> *"Although it would represent a change of use of current employment premises, it would not harm business and employment opportunities in the*

> *area. That is because it would represent the introduction of a new business activity which would be beneficial in providing employment opportunities in the town, and there is no evidence to demonstrate that any other potential employment generating uses would be thwarted in finding suitable premises if this change of use were to be allowed."(Paragraph 8 APP/U1105/A/07/2056318).*

4.18 The arguments advanced by the Inspector in the Honiton case apply to this appeal today. Certainly there are plentiful alternative available sites in the Strangeways area. The positive pro-development arguments we have presented amount to a strong case in support of the applicant. The appeal proposal will generally operate outside of normal office hours, it is proposed for the evening and weekends. The proposal is unlikely to deter any other use entering the area / starting up and certainly the perception of the area will not be harmed by the proposal.

4.19 If the Inspector decided the only way to grant the appeal proposal were to impose a temporary permission for three years, as with the South Wales Case, the applicant would accept.

Conclusion

5.1 The planning system is structured to allow for planning applications to propose and to regularise development. The Government is also very clear in their recent guidance that Council's should work with applicants in a to create sustainable development:

> *187. Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area."* (Paragraphs 186 and 187 of the National Planning Policy Framework.)

5.2 A visit to the area demonstrates the area needs intervention or stimulus. Whilst some consultees have a moral objection to a 'sex' use it is however a proposed use that is legal. The use is intended to be managed in accordance with a management strategy that will provide surveillance of the street and reduce opportunities for crime. The NPPF is very supportive of economic growth. Given the noted appeal decisions, local guidance about natural surveillance reducing possibilities for crime and disorder we suggest the proposal should be granted planning permission.