

Planning

Growth & Development

Delegated officer report for planning application

Application no. 131445/JO/2021

Date registered valid: 19 August 2021

Proposal: Application to vary condition nos. 4 (use of front external seating area) and 5 (use of rear external seating area) attached to planning permission 123389/FO/2019 in order to allow the external seating areas to be utilised until 10.00pm and 11.00pm.

Address: 105 Beech Road, Manchester, M21 9EQ

Ward(s): Chorlton Ward

Applicant: Greg Costello, Barrio Chorlton Cafe Bar, 105 Beech Road, Manchester, M21 9EQ

Agent (if any): Mr John Cummins, MTPC, My Town Planning Consultancy, 9 Astley Hall Drive, Bury, BL0 9DF

Case officer: Linda Marciniak
Tel: 0161 234 4636
Email: linda.marciniak@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 21 October 2021

Application details

Type of application: Variation or Removal of Condition
Development type: Minor Other
Date of site visit: 30.09.2021
Standard consultations: Printed: 6 September 2021 Expired: 27 September 2021
Neighbour notifications: Printed: 6 September 2021 Expired: 27 September 2021
Site notice: Posted: 13th October 2021 Expired: 3rd November 2021
Press advert Published: 14 September 2021 Expired: 5 October 2021
Departure from Development Plan: No
Environmental Statement: Not required
Listed building: Not applicable
Conservation area: Chorlton Green (Extension) Conservation Area 2007
Tree Preservation Order: Not applicable

Description of site/building

The application site is a mid-terraced three-storey property within a parade of 12 on the south side of Beech Road in the Chorlton ward. There is a small forecourt at the front of the site that is enclosed with timber fencing and a yard at the rear that opens onto an ungated alleyway. A separate door adjacent the property is numbered 105A which leads to a flat above. Parking is unrestricted on street.

The present application seeks to vary the hours of the front and rear external seating areas which were conditioned on approval of application 123389/FO/2019 to allow amendments to the hours of opening. These permitted the premises to open between 8.00am to 11.30pm seven days a week with condition 4 stating that:

The front external seating area shall only be in use by patrons and staff of the premises between the hours of:

08.00 hours to 22.00 every day and the bi-fold front doors closed from 22.00 hours every day

And condition 5 adding that:

The rear external seating area shall only be in use by patrons and staff of the premises between the hours of 09.00 to 21.00 hours every day.

Conditions were also appended for servicing and delivery hours, waste management and acoustic insulation.

Description of Area

The site is surrounded by independent commercial uses mainly falling within the former A1, A3 and A4 use classes. Within the immediate vicinity are bars/restaurants; grocers; hair salon; bakery, pharmacy, clothing retail and two hot food takeaways. Within the broader street are further independent cafes and restaurants, clothing stores, craft shop and galleries.

Description of development

Application to vary condition nos. 4 (use of front external seating area) and 5 (use of rear external seating area) attached to planning permission 123389/FO/2019 in order to allow the external seating areas to be utilised until 10.00pm and 11.00pm.

Consultations & Notification Responses

Neighbour notifications – Objection 1:

Barrio has not been acting in good faith by conforming to current planning restrictions. I have recently complained due to Barrio keeping their rear garden opening past 21:00 which is the permitted time. I was told by them that they are now keeping it open until 22:30. I asked the owner if they were aware that it should be closed at 21:00 and they confirmed that they were. The noise and disturbance I experienced due to Barrio being open past 21:00 has led me to write this objection letter. Because of the disturbance past 21:00 which consisted of people being loud in the garden caused me to have difficulty in getting to sleep and disturbing the peace and enjoyment of my home. The owner told me that they were planning on an application to change the opening time of the garden permanently but rather than wait, they were prepared to breach planning and keep it open which I find to be in bad faith.

The condition I am most opposed to is to extend the rear outdoor garden's opening time. This is what affects me the most. Increasing economic activity at the small site also causes me other problems in the form of noise from waste disposal (moving bins over cobblestone) and increasing beer deliveries. The area is saturated with businesses serving alcohol and food and as a result, this has increased the frequency of deliveries of goods and the amount of waste being removed. I do not support the business increasing their economic activities which will have an adverse impact on the right to enjoy my home.

I wish to deal with the planning statement they submitted as part of their application below. Each paragraph in bold is from Barrio and I will address each point in italics:

Other premises have opened in the area and/or extended their outdoor trading areas and there is now an inconsistency in terms of the hours the sites in this area are allowed to trade, which is adversely affecting the customer base for Barrio and its financial viability.

Whilst other businesses may have inconsistent opening/closing times, this will surely be based on their locations, how they mitigate noise problems and when the application was granted. From a resident's point of view, there cannot be a one size fits all approach.

The businesses cited do not share the same geographic space whereas Barrio's rear garden leads out onto an alleyway that is 3 metres away from the nearest window. Barrio makes comparisons using the Laundrette, J&B Richardson's Bakery and Bar San Juan which do not have rear gardens shared in the alleyway space with the properties on Crossland Road. The Laundrette hasn't been mentioned which I believe is because they have a rear area which has ground floor walls with a retractable canopy to block noise. Barrio doesn't have this, just an open-air garden.

The location of the beer garden which backs onto the alleyway shared with the properties on Crossland Road is a bit of a noise trap. There are tall buildings on either side which means that noise echoes and is amplified. I have not seen any acoustic survey for the noise from the beer garden, but I can reasonably imagine that this does not exist because the garden is 3 metres from the nearest residential property. People who are noisy and drunk will easily cause a noise disturbance in the area.

The applicant cites that their permitted times are adversely affecting the customer base for Barrio and its financial viability, but these are the trading hours they have been open for the last three years (according to their website). Their decision to expand their operation from a café, into a bar extending into their beer garden is theirs alone and they knew the constraints placed upon them when they began their enterprise.

Attached to the application are the decision notices and appeals from sites on Beech Road, namely: Laundrette - Appeal decision on the outdoor area which adjoins residential properties - permitted use until 22.00 - APP/B4215/A/14/2213684

The Laundrette is at the end of the street and is a front facing outdoor area. Barrio also has the same condition imposed that their bi-fold doors must be closed at 10pm. I believe that were Barrio to have a front garden, then 10pm would also be what time they were allowed to serve outdoors. The location is also a lot further away from the nearest residential property so I would say that this is an unfair comparison. 21:00 for Barrio's rear garden which backs onto residential properties cannot be compared with businesses that have front outdoor spaces facing onto Beech Road. Their beer garden backs onto the alleyway facing the rear of Crossland Road.

J&B Richardson's Bakery - Planning consent allowing trading until 23.00 fronting Beech Road - 124700/FO/2019

Again, this is a business fronting Beech Road and the title above is vastly misleading. J&B Richardson's Bakery (Dough House) outdoor area is only open until 22:00 as per their planning decision notice. They are also only allowed to operate until 23:00 which is actually more restrictive than Barrio whose planning decision notice states from 08:00 until 23:30.

Bar San Juan - Planning consent allowing trading until 23.00 fronting Beech Road. - 122664/FO/2019

Bar San Juan sits on the opposite side of the road to Barrio and as such, will affect the residential properties in a different way to Barrio which shares a small alleyway with the properties on Crossland Road. Bar San Juan does not affect me with noise or disturbance from their economic activities.

The rear of Barrio's property was granted 21:00 and I see this as fair due to the close proximity the garden has to the residential properties. The seating comes right up to the edge of the alleyway and is within 3 metres of the nearest windows/walls of Crossland Road. The restriction on the front is shared by other businesses on Beech Road and is even more restrictive on some others such as the recently opened Suburban Green, 60 Beech Road 127789/FO/2020 which must close their bi-fold doors at 21:00.

The restrictions on use of the front until 22.00 and the rear until 21.00, means that the conditions fail the test of 'being reasonable in all other aspects'. In addition, the applicant holds a premises licence to sell alcohol until 23.00 each day, Number 225949.

As I have mentioned above, some of the businesses that Barrio has mentioned above have more restrictive conditions or differ vastly in terms of geographic location. I believe that the test of 'being reasonable in all other aspects' has not failed as it is impossible to allow blanket restrictions on all businesses in the area. Some may have more preferential hours, that is true but it does not necessarily mean that the council should be bullied into granting these and bringing the area down as a result. Once more leeway is given to businesses, it impacts the nearby residents forever as the ability to change this is diminished.

Conditions which unreasonably impact on the deliverability of a development:

In this instance it is argued that Conditions 4 and 5 fail to meet this requirement as they are overly restrictive on the hours of operation of the premises and this impacts directly on the viability of the premises.

I believe that the original decision met the 6 tests and I question now why the applicant is disputing them after trading for 3 years? If the restrictions meant that the viability of the premises were in question, then how are they still in business?

Conditions 4 and 5 are not overly restrictive on the hours of operation of the premises and the business has not only been running successfully, they have tried to expand their operations through use of their garden to the rear.

This argument is further supported by the fact that other premises in the area are allowed to trade until 23.00, where their outdoor areas front onto Beech Road and 22.00 where they are adjacent to residential property.

This cannot be a fair comparison as those front gardens are not in such close proximity to the properties on Crossland Road as Barrio is (3 metres). Like I outlined earlier, there is no acoustic survey for the noise from the rear garden and because of the unique placing of the tall buildings surrounding the alleyway, there is increased noise from echoes.

As a final point I would like to re-iterate that the owner has knowingly breached planning by keeping their garden open past 21:00 at present. What would stop the owner from keeping the outdoor area open until 22:00 when they later decide that 23:00 would be fairer? They have also breached conditions by having beer deliveries outside of their planning decision notice and moving bins late at night (23:30). I do not find Barrio to be particularly considerate neighbours and they wish to run their business to the nearby resident's detriment. Barrio's financial situation is there own to manage and it shouldn't be at my expense, nor should I be sympathetic to their needs. They did, after all decide to run a bar next to a residential area rather than keep the business as a coffee shop which appears to be their original plan for the site. It was their own decision to expand their operations.

As I have already pointed out, Barrio have changed from a café to a bar/restaurant. The activity at the site has actually grown from what was originally proposed to a business that should have more stringent conditions. People who are drinking alcohol are undoubtedly going to be more disruptive than people drinking coffee. I believe that Barrio is trying to capitalise on the fact that they have a large outdoor area but have no consideration for the people who live there.

Objection 2 (Same Objector as Objection 1)

I would like to object on the same grounds as my previous objection as the original reasons still stand relating to 123389/FO/2019.

Neutral neighbour comment:

A comment relating to the general management of waste by all commercial businesses fronting onto Beech Road has been made.

The neighbour reported no specific concerns with regards to the effects of noise arising from the activities at Barrio bar.

Environmental Health – Comments 1:

I have concerns about extending the hours for the rear outdoor seating area due to the impact on residents on Crossland Road. They have provided evidence that some premises have until 23:00 for their seating on Beech Road so for consistency I am happy to allow this. I would still keep on the condition to close the bi-folding doors at 22:00 though.

Looking at their examples the Laundrette is on the corner of Beech Road and Wilton Road which is ambiently noisier than the rear of Barrio. I have looked on the system and there is an

open complaint from the last month related to excessive noise from the rear seating area and them using this area past 9pm.

Environmental Health – Comments 2:

I did a visit last night and both outdoor seating are very similar as they both have roof structures over them. During the visit the noise from the seating areas were comparable to each other. As such I can agree the extension of hours for the rear seating of Barrio to 10pm in line with Lead Station.

Policy

Manchester Core Strategy

'The Core Strategy Development Plan Document 2012 -2027 ("the Core Strategy") was adopted by the City Council on 11th July 2012 and is the key Development Plan Document in the Local Development Framework (LDF). The Core Strategy is to be used as the framework that planning applications will be assessed against.

There are a number of policies within the adopted Core Strategy relevant to the consideration of the application, as set out below:

Policy C8 (Local Centres) - This policy states that local shopping and service provision in local centres should be retained where it remains viable and provides an important service to the local community. The provision of new small-scale retail facilities will be encouraged where they would provide for local every day needs and would not be harmful to the vitality and diversity of nearby centres. Careful consideration will be given to the impacts of new commercial development on residential amenity, which is particularly an issue for food and drink uses. Development proposals in local centres which would not reflect the local role of these centres will be assessed according to policy C9 (Out of Centre Development).

Policy SP1 (Spatial Principles) - This policy sets out the key spatial principles which will guide the strategic development of Manchester to 2027 and states that outside the City Centre and the Airport the emphasis is on the creation of neighbourhoods of choice. All development should have regard to the character, issues and strategy for each regeneration area as described in the North, East, Central and South Manchester and Wythenshawe Strategic Regeneration Frameworks and the Manchester City Centre Strategic Plan.

It also sets out the core development principles, including:

- Make a positive contribution to neighbourhoods of choice.
- Minimise emissions, ensure efficient use of natural resources and reuse previously developed land wherever possible.
- Improve access to jobs, services, education and open space by being located to reduce the need to travel and provide good access to sustainable transport provision.

Policy DM1 (Development Management) this policy states all development should have regard to the following specific issues:

- Appropriate siting, layout, scale, form, massing, materials and detail.
- Impact on the surrounding areas in terms of the design, scale and appearance of the proposed development. Development should have regard to the character of the surrounding area.
- Effects on amenity, including privacy, light, noise, vibration, air quality, odours, litter, vermin, birds, road safety and traffic generation. This could also include proposals which would be sensitive to existing environmental conditions, such as noise.
- Accessibility: buildings and neighbourhoods fully accessible to disabled people, access to new development by sustainable transport modes.

- Community safety and crime prevention.
- Design for health.
- Adequacy of internal accommodation and external amenity space.
- Refuse storage and collection.
- Vehicular access and car parking.
- Effects relating to biodiversity, landscape, archaeological or built heritage.
- Green Infrastructure including open space, both public and private.
- The use of alternatives to peat-based products in landscaping/gardens within development schemes.
- Flood risk and drainage.
- Existing or proposed hazardous installations.
- Subject to scheme viability, developers will be required to demonstrate that new development incorporates sustainable construction techniques.

As set out within the issues section of this report below, the application proposals are considered to accord with policy DM1 of the Core Strategy.

Unitary Development Plan (1995)

The majority of the previous UDP policies have been replaced by the Core Strategy, however there are still saved policies that remain extant. The relevant policies for this application are set out below.

Policy DC26.1 indicates that the Council will use the development control process to reduce the impact of noise on people living and working in, or visiting, the City. In giving effect to this intention, the Council will consider the implications of new development being exposed to existing noise sources which are effectively outside planning control.

Policy DC26.4 states that where the Council believes that an existing noise source might result in an adverse impact upon a proposed new development, or where a new proposal might generate potentially unacceptable levels of noise, it will in either case require the applicant to provide an assessment of the likely impact and of the measures he proposes to deal satisfactorily with it. Such measures might include the following:

- a. engineering solutions, including reduction of noise at source, improving sound insulation of sensitive buildings or screening by purpose-built barriers;
- b. layout solutions, including consideration of the distance between the source of the noise and the buildings or land affected by it; and screening by natural barriers or other buildings or non-critical rooms within a building; and
- c. administrative steps, including limiting the operating times of the noise source, restricting activities allowed on the site or specifying an acceptable noise limit. Any or all of these factors will be considered appropriate for inclusion in conditions on any planning permission.

The National Planning Policy Framework (2021)

There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- An economic role, contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- A social role, supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the communities needs and support its health, social and cultural well-being; and
- An environmental role, contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources

prudently, minimise waste and pollution, and mitigate and adapt to climate The NPPF states that where proposed development accords with an up-to-date Local Plan it should be approved.

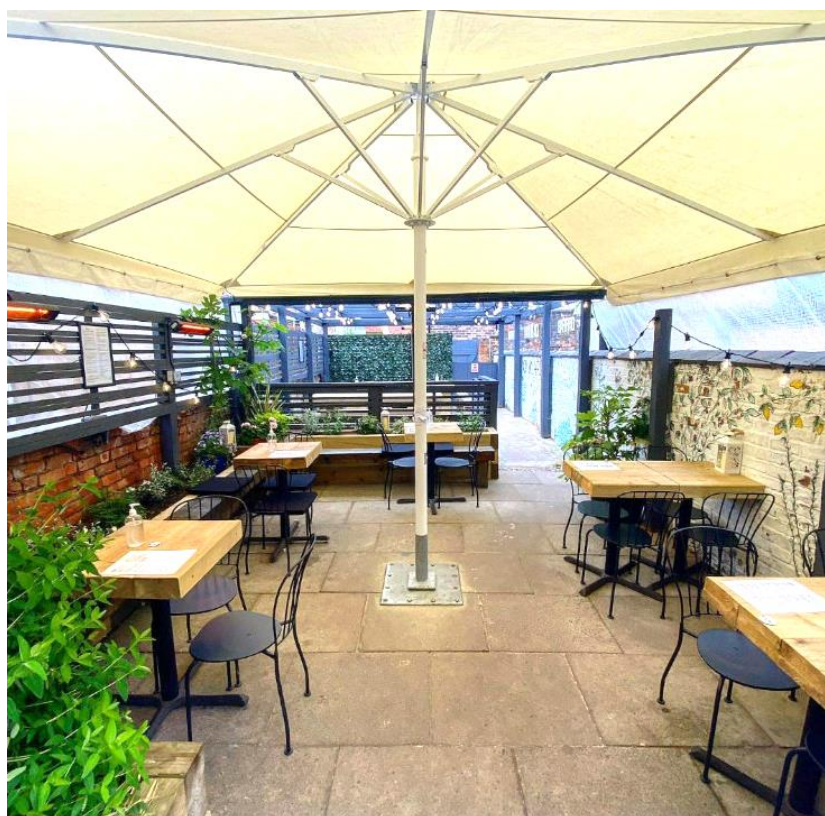
Issues

Principle

The proposal is an existing conforming use within the Beech Road Local Centre and therefore compliant with the overarching policy of C8 of the Manchester Core Strategy. This policy seeks to balance the provision of local convenience and small-scale shops and services situated within a residential context. As the use is existing and similar food and drink premises in the local area operate to the hours proposed in this application, the principle of the proposal is acceptable.

Hours

Consideration has been given to the proposal with specific reference to extending the hours of the rear external area which has several tables and chairs set out over $\frac{3}{4}$ of the yard area with a weather protection jumbrella. The front seating area on Beech Road has higher ambient noise levels than at the rear and so an increase to 11pm is considered acceptable.



A number of factors lend support to the proposal to extend the rear opening hours until 10pm as set out below.

The proposal represents a small increase on the current permitted hours and would end at a time that is not generally considered to be anti-social. For the avoidance of doubt, a condition is recommended that the rear doors are closed from 10pm.

The business is one of only two within the parade that operate as a bar/restaurant with external rear seating. Although there is potential for neighbouring uses falling within Class E of the GPDO to change to a bar/restaurant within the parade, most other premises have built over the rear yards. This significantly

restricts the potential for further external seating areas facing the rears of Crossland Road and thus limits further cumulative noise outbreak opportunities.

The appeal decision at No.32 Beech Road established an external seating area closing time of 10pm (Ref: 103139/JO/2013/S1 / APP/B4215/A/14/2213684). It is noted that this is also the closing time of the canopy over the rear external seating at No.99 Beech Road (Lead Station) (Ref: 055943/FO/SOUTH2/99), 3 doors away from the application site. The Lead Station hours sets a precedent in the parade against which the application has been considered and has led to re-assessment of the application by the Environmental Health Officer. The EHO visited the rears of both No.99 Beech Road and the application site in the evening and regarded that the noise levels from both premises was comparable. This led to the EHO removing her original

objection to the extended hours at the rear. There was no objection to extending the front external seating area hours.

Other considerations are that the kitchen at the site closes at 8pm which means that patrons could be dining outdoors until the proposed extended closing time, rather than just drinking, which can give rise to very different noise levels.

Given the location of the application site within an active Local Centre where neighbouring land uses have similar opening hours at the front and rear, the proposed amendments to the opening hours are considered acceptable.

An objection has been received by one resident living on Crossland Road at the rear of the site, due to an instance of noise disturbance. Another resident of Crossland Road has noted that noise levels are not intrusive and does not object but has noted that generally, all commercial businesses could better manage their waste.

The Council acknowledges that external dining / drinking can give rise to noise nuisance which, if unmanaged, can lead to a loss of amenity. In this instance, and for the reasons set out above, the proposed hours are assessed as reasonable in this context. As such, the proposal is considered to accord with saved UDP policies DC10 and DC26 together with Core Strategy policies SP1 and DM1, with no issues of sufficient material weight to indicate otherwise.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Approve

Article 35 Declaration

The local planning authority in making its decision has had due regard to paragraph 47 of the National Planning Policy Framework as well as the development plan, national planning policy and other material considerations and has approved the application subject to appropriate conditions and for the reasons outlined in the delegated report. One objection was received from a local resident, together with one letter of support which have been taken into consideration in the assessment of the proposal, together with consideration of the external operational hours of neighbouring land uses and the Environmental Health Officer's assessment.

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) The front external seating area shall only be in use by patrons and staff of the premises between the hours of:

08.00 hours to 23.00 every day and the bi-fold front doors closed from 22.00 hours every day.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to policies SP1 and DM1 of the Manchester Core Strategy and to saved policy DC26 of the Unitary Development Plan for Manchester.

2) The rear external seating area shall only be in use by patrons and staff of the premises between the hours of 09.00 to 22.00 hours every day and the rear doors closed from 22.00 hours every day.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to policies SP1 and DM1 of the Manchester Core Strategy and to saved policy DC26 of the Unitary Development Plan for Manchester.

3) The premises shall not be open outside the following hours:

Monday to Sunday 08.00 to 23.30.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to policies SP1 and DM1 of the Manchester Core Strategy and to saved policy DC26 of the Unitary Development Plan for Manchester.

4) Deliveries, servicing and collections, including waste collections shall not take place outside the following hours: 07:30 to 20:00, Monday to Saturday, no deliveries/waste collections on Sundays/Bank Holidays.

This includes the disposal of refuse, glasses, or glass bottles being disposed of in outside receptacles.

Reason - To safeguard the amenities of the occupiers of nearby residential accommodation pursuant to saved UDP policy DC10 and policies SP1 and DM1 of the Manchester Core Strategy.

5) There shall be no playing of live or amplified music in the external areas of the building.

Reason - To protect the residential amenity of the area from excessive noise pursuant to Core Strategy policies DM1 and C10 and saved Unitary Development Plan policies DC10 and DC26.

Appendix 1 – List of consultees & neighbours notified

Environmental Health
Chorlton Voice
Beech Road Traders

29 Crossland Road, Manchester, M21 9DU
113A Beech Road, Manchester, M21 9EQ
Flat 1, 109 Beech Road, Manchester, M21 9EQ
105A Beech Road, Manchester, M21 9EQ
52A Beech Road, Manchester, M21 9EG
First And Second Floors, 111 Beech Road, Manchester, M21 9EQ
101A Beech Road, Manchester, M21 9EQ
54C Beech Road, Manchester, M21 9EG
Flat 2, 109 Beech Road, Manchester, M21 9EQ
37 Crossland Road, Manchester, M21 9DU
109 Beech Road, Manchester, M21 9EQ
31 Crossland Road, Manchester, M21 9DU
The Lead Station, 99 Beech Road, Manchester, M21 9EQ
52 Beech Road, Manchester, M21 9EG
113 Beech Road, Manchester, M21 9EQ
111 Beech Road, Manchester, M21 9EQ
107 Beech Road, Manchester, M21 9EQ
101 Beech Road, Manchester, M21 9EQ
50 Beech Road, Manchester, M21 9EG
41 Crossland Road, Manchester, M21 9DU
39 Crossland Road, Manchester, M21 9DU
35 Crossland Road, Manchester, M21 9DU
33 Crossland Road, Manchester, M21 9DU
103 Beech Road, Manchester, M21 9EQ
48 Beech Road, Manchester, M21 9EG
46A Beech Road, Manchester, M21 9EG
46 Beech Road, Manchester, M21 9EG

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Conservation Area - Chorlton Green (Extension) Conservation Area 2007
Area Team Boundary - Name: SOUTH