

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142302/LE/2025
Date registered valid: 15 May 2025
Proposal: Use of ground floor of property as a cafe/restaurant (Use Class E(b)).
Address: 352 Great Western Street, Manchester, M14 4BY
Ward(s): Moss Side Ward

Applicant: Mr Abid Miah
Agent (if any): Mr V Alyas Architek
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 7 July 2025

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 04 July 2025

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 27 May 2025 Expired: 17 June 2025

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building and area

The application site relates to the ground floor of a two storey end terraced property located on Great Western Street. The surrounding area is predominantly residential with commercial premises being located on main artery roads.



Photograph 1 352 Great Western Street

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of lawful development for the proposed use of ground floor of property as a cafe/restaurant (Use Class E(b)).

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicants version of events or make them less then probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - "If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?" In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

Planning History

Application Reference and Status	Description
124424/FO/2019 Recv: 30.09.2019 Finally Disposed Of - 05.11.2021	Change of use from retail (Class A1) to hot food take-away (Class A5).
121528/FO/2018 Recv: 16.10.2018 Application Approved - 02.07.2019	Installation of a rear dormer to form additional living space, single storey side extension, alterations to the rear and external alterations
119258/FO/2018 Recv: 02.03.2018 Application Refused - 09.07.2018	Installation of a rear dormer to form additional living space
121203/FO/2018 Recv: Application Returned -	Change of use from retail (Class A1) to hot food take-away (Class A5)
119196/FH/2018 Recv: Application Returned -	Erection of a second floor roof extension at the rear to form additional living accommodation and installation of two rooflights to the front elevation.
030559 Recv: 21.12.1987 Application Approved - 25.02.1988	Change of use from a shop to a cafe and take away hot food shop
F00610 Recv: 25.04.1974 Application Approved - 31.05.1974	Single storey extension rear of shop to provide new toilet accommodation.

The Assessment

The applicant is seeking a certificate of lawful development for the proposed use of the ground floor as Restaurant (Use Class E(b)).

The Government published the Town and County Planning (Use Classes) (Amendment) (England) Regulations 2020 in July 2020 which came into force on the 1st of September 2020. The changes included revisions of the classification of uses of property. Former Classes A, B1

and D, applicable to retail, office and non-residential institutions and assembly and leisure uses were removed and a new use class introduced in their place.

The new Class E includes commercial, business and service and brings together the former A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use without the need of planning permission.

To demonstrate that the premises have been in Class E use, the applicant has submitted a series of Google Street View images taken from Great Western Street. These images show the property operating as a shop from 2008 to 2018, with a change of use to a restaurant evident by July 2019, which has continued through to the most recent imagery dated July 2024.

In support of this, an Energy Performance Certificate (EPC) dated 21 June 2023 confirms the property was in use as “Restaurants and Cafes / Drinking Establishments / Takeaways.” Additionally, Business Rates records indicate that from 1 April 2023, the property has been classified as a “shop and premises.”

Taken together, this evidence clearly supports the conclusion that the use of the premises falls within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), which defines use classes for the purposes of Section 55(2)(f) of the Town and Country Planning Act 1990.

In this regard the Planning Practice Guidance advises (emphasis added) that:

*“In the case of applications for **existing use**, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, **there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.**”*

Paragraph: 006 Reference ID: 17c-006-20140306

During the validation stage of the application, officers sought clarification from the applicant regarding the submitted drawing (Image 1). The plan appeared to show café seating extending into the side extension; however, it also depicted a secondary unit attached to the extension, with a separate entrance from Deramore Street. This unit was not annotated to indicate its use, nor was it shown as forming part of the café. Instead, it was simply greyed out on the plan, creating ambiguity regarding its function.

In response, the applicant submitted a revised drawing (Image 2), which now excludes the side extension from the café use. A comparison between the two drawings reveals that the amendment involved the insertion of a wall where the serving counter had previously been shown, thereby physically separating the extension from the café area.

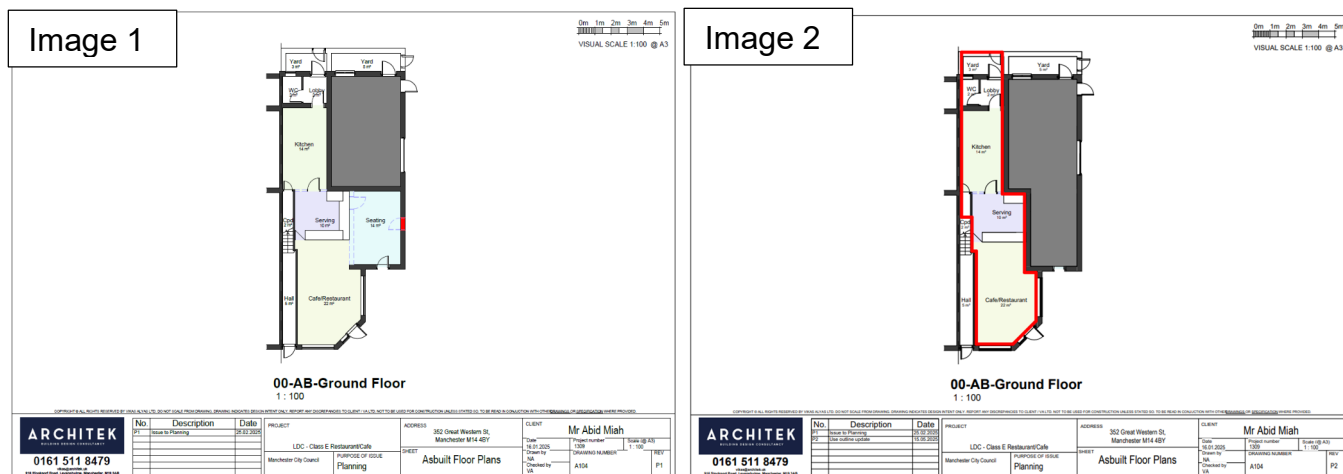


Image 1 “As built floor plans” original drawing submission

Image 2 Amended ground floor plan

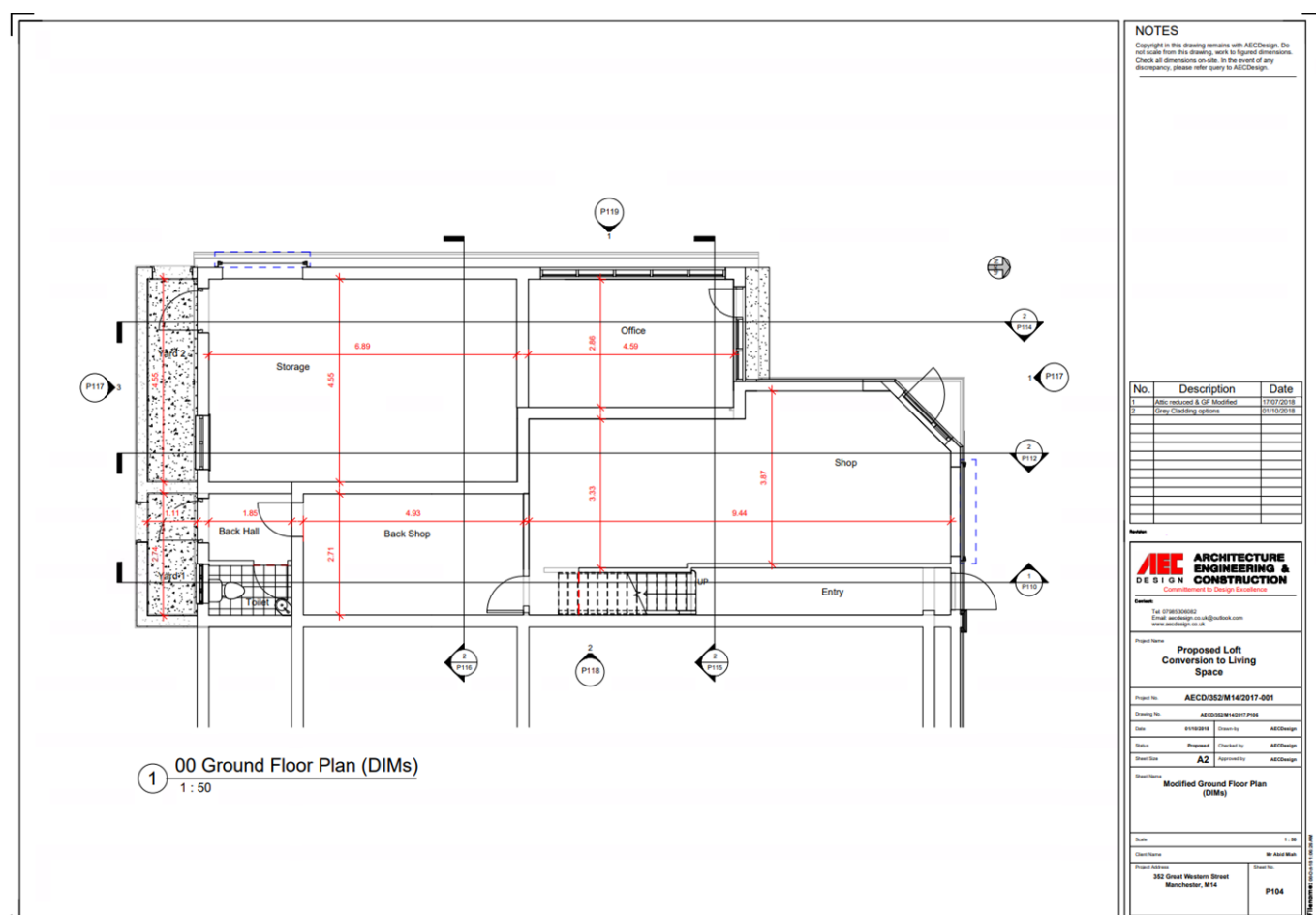


Image 3 Approved floor plan 121528/FO/2018

In July 2019, planning permission was granted under reference 121528/FO/2018 for the installation of a rear dormer, a single-storey side extension, and various rear and external alterations. The approved floor plans (Image 3) clearly show a physical separation between the original shop unit and the side extension, which was labelled for use as office and storage.

In line with the guidance that the Council is not required to go to great lengths to disprove the applicant's version of events, officers have also considered online reviews, photographs provided by former customers, and social media posts relating to the business. This additional evidence has been used to gain a clearer understanding of the actual use of the premises, including

whether any part of the side extension has, in practice, been used as part of the original shop or café.

Photograph 1 shows that whilst not open the premises contains the fascia signs for a premises called “Tassi’s” which in the streetview image from 2024 was Tassi’s Diner. Tassi’s Diner is considered to be a Class E use. The images and reviews found online clear relate to the property being in this use, as shown in images 5 and 6 the café seating clearly extended into the side extension.

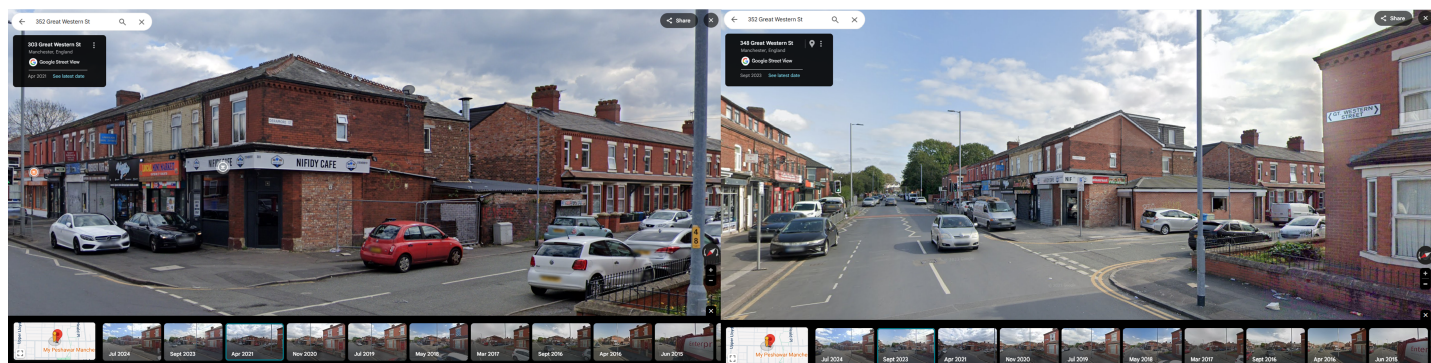


Image 3 + 4 Google Street Views April 2021 (lhs) and September 2023 (rhs) showing application site prior and after the construction of the side extension.

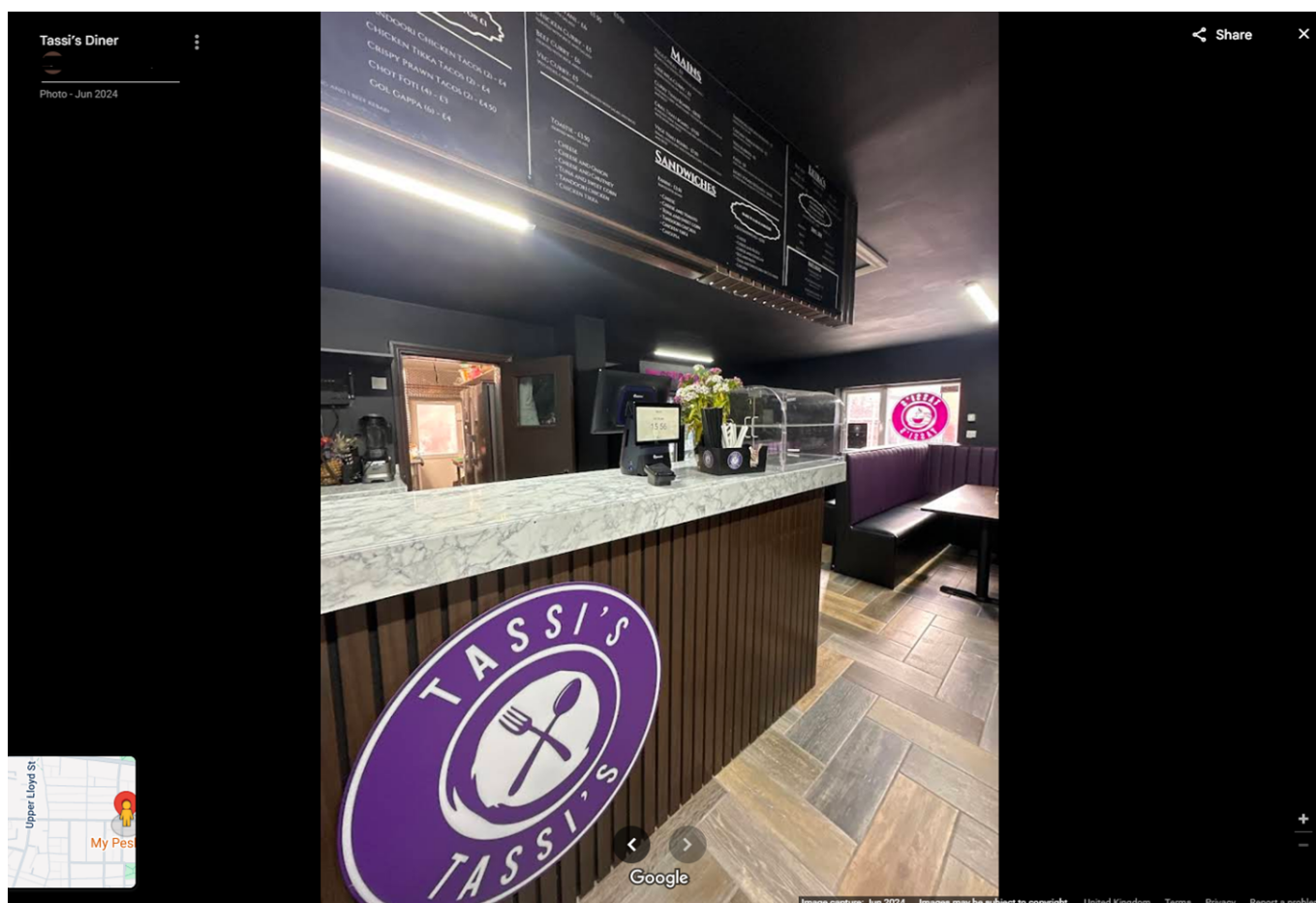
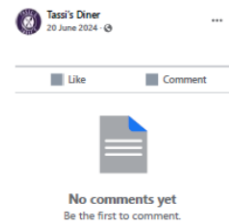


Image 5 Tassi's Diner counter and seating area incorporated into side extension. Source: <https://maps.app.goo.gl/Mx3wKzLkVoFLqEKcA> accessed 07/07/2025



Log in or sign up for Facebook to connect with friends, family and people you know.

Image 6 – Video Capture of Tassi's Diner counter and seating area incorporated into side extension. Source: <https://www.facebook.com/61560093665542/videos/a.122112723662336455/7362389863890023> accessed 04/07/2025

Conclusion

Based on the information provided, the current or previous use of the property appears to fall within the scope of Class E(a) or E(b) of the Use Classes Order. The proposed use would likely fall under Class E(b). However, there remains uncertainty regarding the extent and configuration of the seating area, as depicted in images sourced from social media and online reviews. The most recent floor plan does not clearly identify whether a new wall has already been or is intended to be constructed, or a serving counter has been installed as depicted on the original drawings, leaving the intended layout of the space ambiguous.

In addition, it is evident that the single-storey side extension, as constructed, does not align with the approved plans. Notable discrepancies include differences in the design and placement of windows, doors, and the roof. Consequently, this side extension is unauthorised and would require regularisation, either through the submission of a new planning application or by undertaking remedial works to bring the extension into compliance with the original planning permission.

Therefore, due to the lack of clarity regarding the internal floor space and the unauthorised nature of the extension, the applicant has failed to demonstrate that the ground floor of 352 Great Western Street can lawfully operate as a café or restaurant under Use Class E(b).

Other Legislative Requirements

Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

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: Refuse

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

1) The applicant has failed to demonstrate that 352 Great Western Street, Manchester, M14 4BY, that the ground floor can be used as a as a cafe/restaurant (Use Class E(b)), due to the lack of clarity regarding the internal floor space and the unauthorised nature of the extension.

Appendix 1 – List of consultees & neighbours notified

Massawa Cafe, 356 Great Western Street, Manchester, M14 4BY
Top Flat, 311 Great Western Street, Manchester, M14 4BZ
303A Great Western Street, Manchester, M14 4BZ
352A Great Western Street, Manchester, M14 4BY
Flat Above, 305 Great Western Street, Manchester, M14 4BZ
313 Great Western Street, Manchester, M14 4BZ
307 Great Western Street, Manchester, M14 4BZ
313A Great Western Street, Manchester, M14 4BZ
Flat Above, 309 Great Western Street, Manchester, M14 4BZ
Flat 2, 354A Great Western Street, Manchester, M14 4BY
Flat 1, 354A Great Western Street, Manchester, M14 4BY
350 Great Western Street, Manchester, M14 4DS
311 Great Western Street, Manchester, M14 4BZ
309 Great Western Street, Manchester, M14 4BZ
305 Great Western Street, Manchester, M14 4BZ
303 Great Western Street, Manchester, M14 4BZ
2 Deramore Street, Manchester, M14 4DU
1 Deramore Street, Manchester, M14 4DT
354 Great Western Street, Manchester, M14 4BY

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Area Team Boundary - Name: SOUTH AREA