

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141900/LE/2025
Date registered valid: 14 January 2025
Proposal: Single storey timber structures providing covered seating and entrance to the restaurant
Address: 133 Beech Road, Manchester, M21 9EQ
Ward(s): Chorlton Ward

Applicant: Mr Mahmut Tutan Veroz Limited
Agent (if any): Mr Matthew Myers LHG Projects Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 21 March 2025

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 25 February 2025

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 21 January 2025 Expired: 11 February 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

133 Beech Road in Manchester, M21 9EQ, is home to Casa de Moor, a popular bar and restaurant in the Chorlton.

Situated on Beech Road, the restaurant is part of an eclectic mix of independent shops, cafes, and restaurants, making it a popular destination for both locals and visitors. The area is also part of the Chorlton Green Conservation Area, centred around Chorlton Green, the last remaining vestige of the original village.

The property is a two-storey former place of worship (photograph 1), which later became a warehouse and is currently in use as a restaurant (photograph 2).



Photograph 1 Methodist Mission Chapel, Chorlton-Cum-Hardy, adjoining 131 Beech Road, Manchester Taken 11/1958



Photograph 1 133 Beech Road 'Casa De Moor' Restaurant Taken 25/02/2025

Listed building: Not applicable

Conservation area: Chorlton Green Conservation Area

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of existing lawful development for the single storey timber structures providing covered seating and entrance to the restaurant.

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties).

Local residents/public opinion- No representation or comments received.

Chorlton Civic Society (formerly Chorlton Voice) – Object to the granting of the certificate as the applicants have not proven that the existing structures have been complete and in use for over four years. Google Street View images from 2019 to 2024 show significant differences in the structures between 2021 and 2022. Therefore, it is requested that the application be refused and enforcement action taken urgently.

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 than 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 191, which provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

In a case of this type, the onus is on the applicant to substantiate their case on the balance of probability. This involves the applicant demonstrating that the single-storey timber structures providing covered seating and entrance to the restaurant were substantially completed four years prior to the date of this application, **14 January 2025**.

However, on **25 April 2024**, the immunity period for planning breaches changed from four years to ten years because of the changes brought in by section 115 of the Levelling-up and Regeneration Act 2023, which amended section 171B of the 1990 Act.

Therefore, should the application be considered for ten years instead of four? The answer depends on whether the structure was substantially completed on or before **24 April 2024** to be considered under the four-year immunity period. If the structure was substantially completed after this date, the applicant would need to demonstrate ten years instead of four.

Assessment of Evidence

The planning statement submitted to support the application indicates that the works were completed by **2 January 2021**. Considering the changes to the immunity period discussed above, the applicant needs to demonstrate that the structure was substantially completed by **2 January 2021** and remained in situ and unchanged for four years, and until **15 January 2025**, i.e. that date of the application, for a certificate to be granted.

The evidence provided by the applicant includes a planning statement indicating that the timber structures were erected in 2020 during the Covid pandemic. These structures were built over the outside seating area to aid in the economic recovery of the business.

To support this statement, the applicant has provided a Google Street View image from November 2020, a Facebook photograph from October 2020 showing the left-hand side of the structure in use, and a screenshot from a video taken in January 2021 showing the right-hand side of the structure.

Additionally, a location plan has been submitted, showing the extent of the covered seating area at the front of the building facing Beech Road (image 1).



Image 1 Part of the location plan illustrating the extent of the covered seating area

The image montage below provides a detailed visual timeline of the seating area in front of 133 Beech Road, spanning from July 2019 to February 2025. This timeline, accompanied by comments from the Chorlton Civic Society and images from Google Street View, vividly illustrates how the structures have developed over this period.

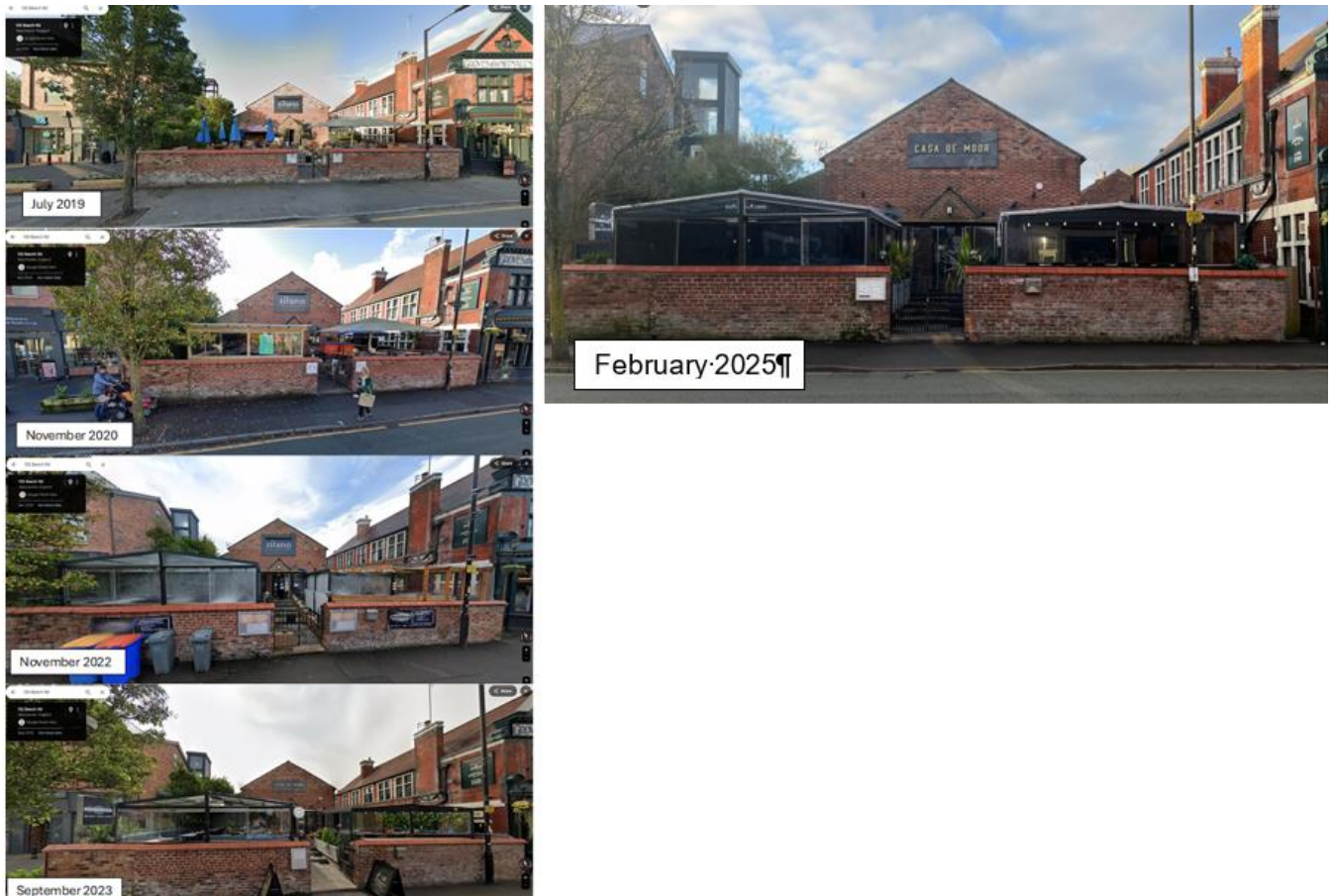


Image Montage 1 133 Beech Road as viewed from the public highway from July 2019 until February 2025. Source: Google Street View (2019 – 2023) and case officer photograph 2024

Unhelpfully, there is no Streetview image from any point in 2021, that would corroborate with the 2 January 2021 date provided by the applicant, so as to establish when the structure was substantially complete. 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

LHG Projects
Architectural Design & Surveying



Photo 3 - Image taken from video showing right hand side structure complete taken 02/01/2021 - (full video can be sent if required)

LHG Projects
Architectural Design & Surveying



Photo 4 - Date stamp from phone used to record video showing right hand side structure complete

Image 3 Photos 3 and 4 provided by the applicant in the supporting statement pages 4 and 5.

Returning to the evidence provided by the applicant, the date relies on a screenshot from a video showing part of the structure dated 2 January 2021. While this does provide a date, it is somewhat ambiguous, simply because it does not show the entire structure. Additionally, there is no statement from a builder, receipt, or other evidence to corroborate this date.

Following the statement in the guidance, namely that the Council need not go to great lengths to disprove the applicant’s version of events, officers have taken account of the online reviews and accompanying photographs provided by former customers, together with social media postings regarding the business. The focus has been around January 2021 to October 2021, this being the period in which the applicant has stated that the structures were substantially complete and the same period being absent from Street View imagery, likely due to the Covid pandemic.

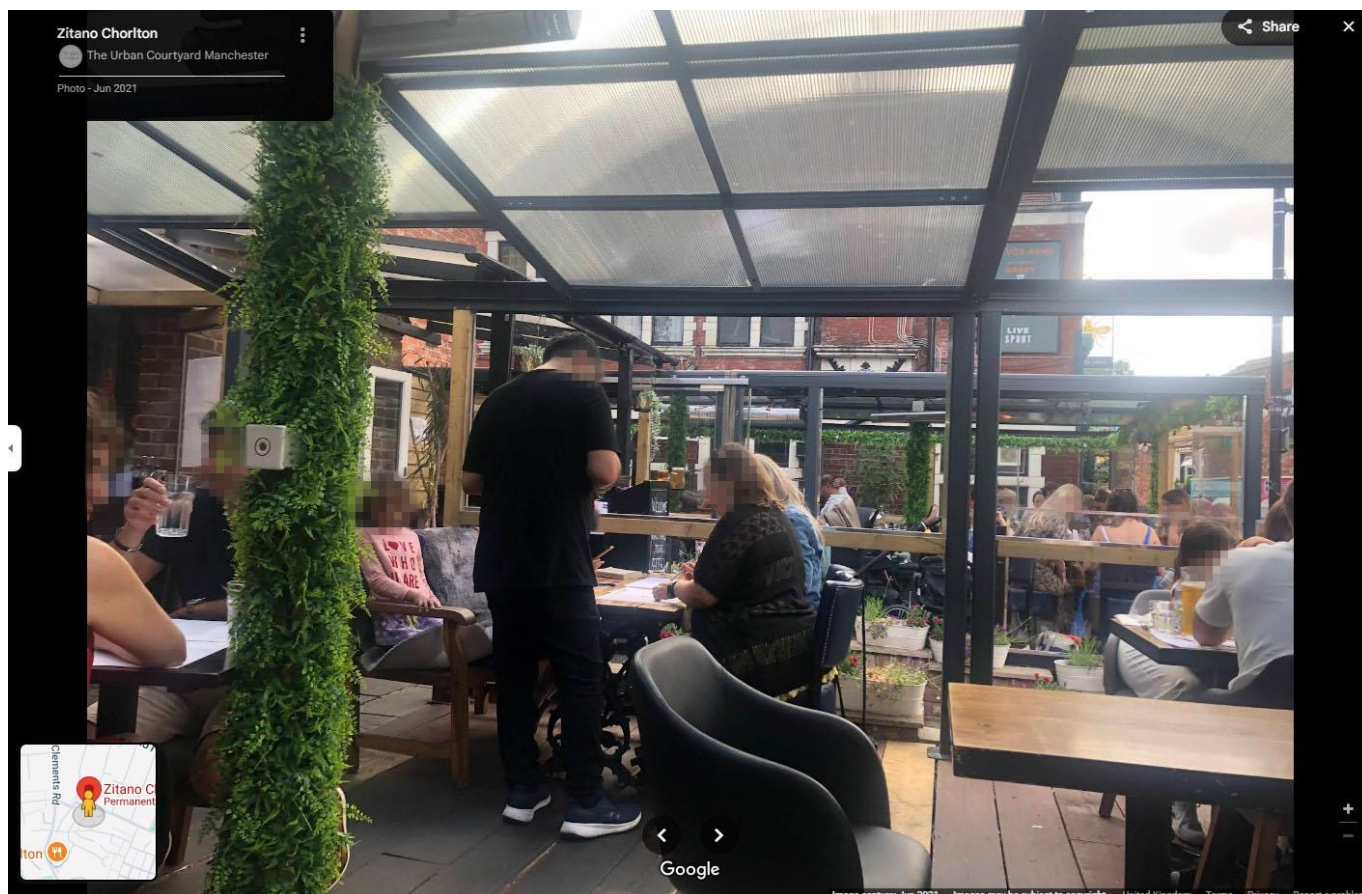


Image 4 Google Review image captured June 2021

Image 4, taken from a review by a former customer under the previous restaurant name, clearly shows that in June 2021, while seating and tables were in situ, not all the window glazing nor stallrisers had been installed, thus it was still open to the elements.

Image 5, another image taken by a different customer again shows the side panels had not been installed at this time.

Images 6 and 7, relate to screenshots from Facebook posts on 21 June 2021 and 28 June 2021 corroborate that the structure was not substantially complete at that time. However, the local planning authority have noted that the video which provided image 6, was also posted in April 2021; this is still after the 2 January 2021 date provided by the applicant and is nevertheless supported by image 4 above.



Image 5 Google Review image captured June 2021



Image 6 Facebook video screenshot posted 15 June 2021

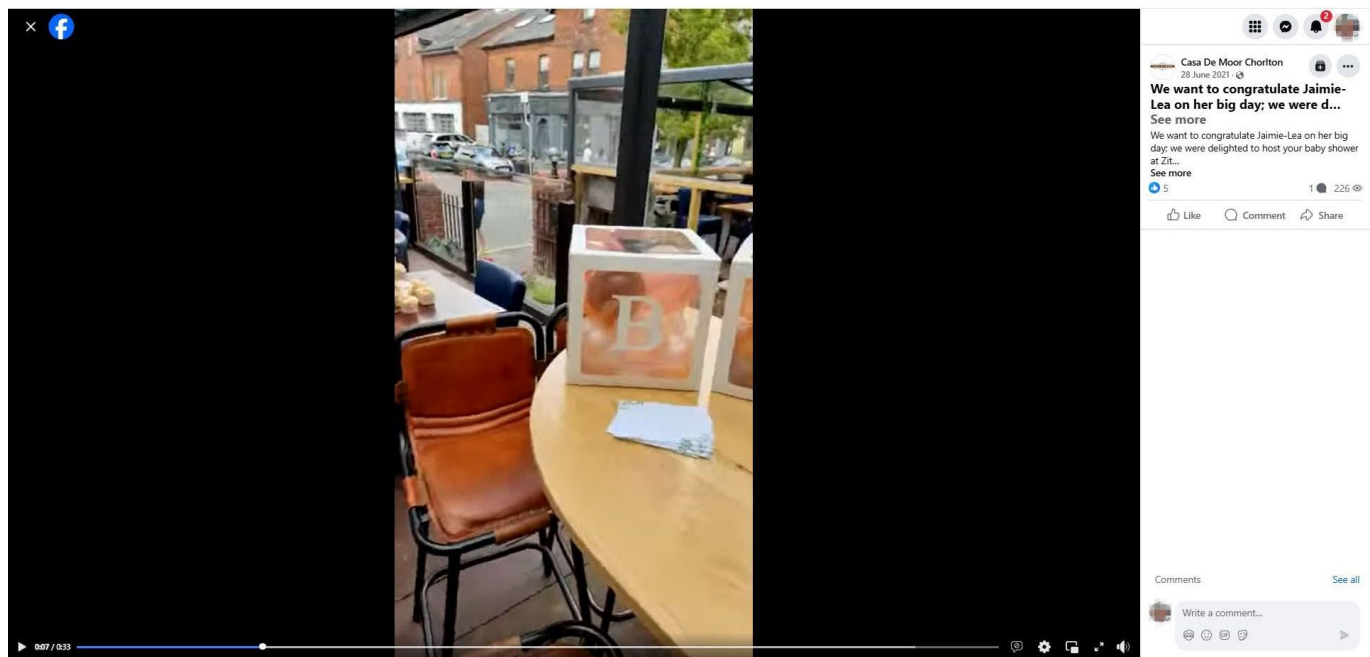


Image 7 Facebook video screenshot posted 28 June 2021

Image 8, shows that in August 2021, the structure was still not complete, note the stallriser behind the guests remains open to the elements and clear view of the planters to the main entrance pathway.

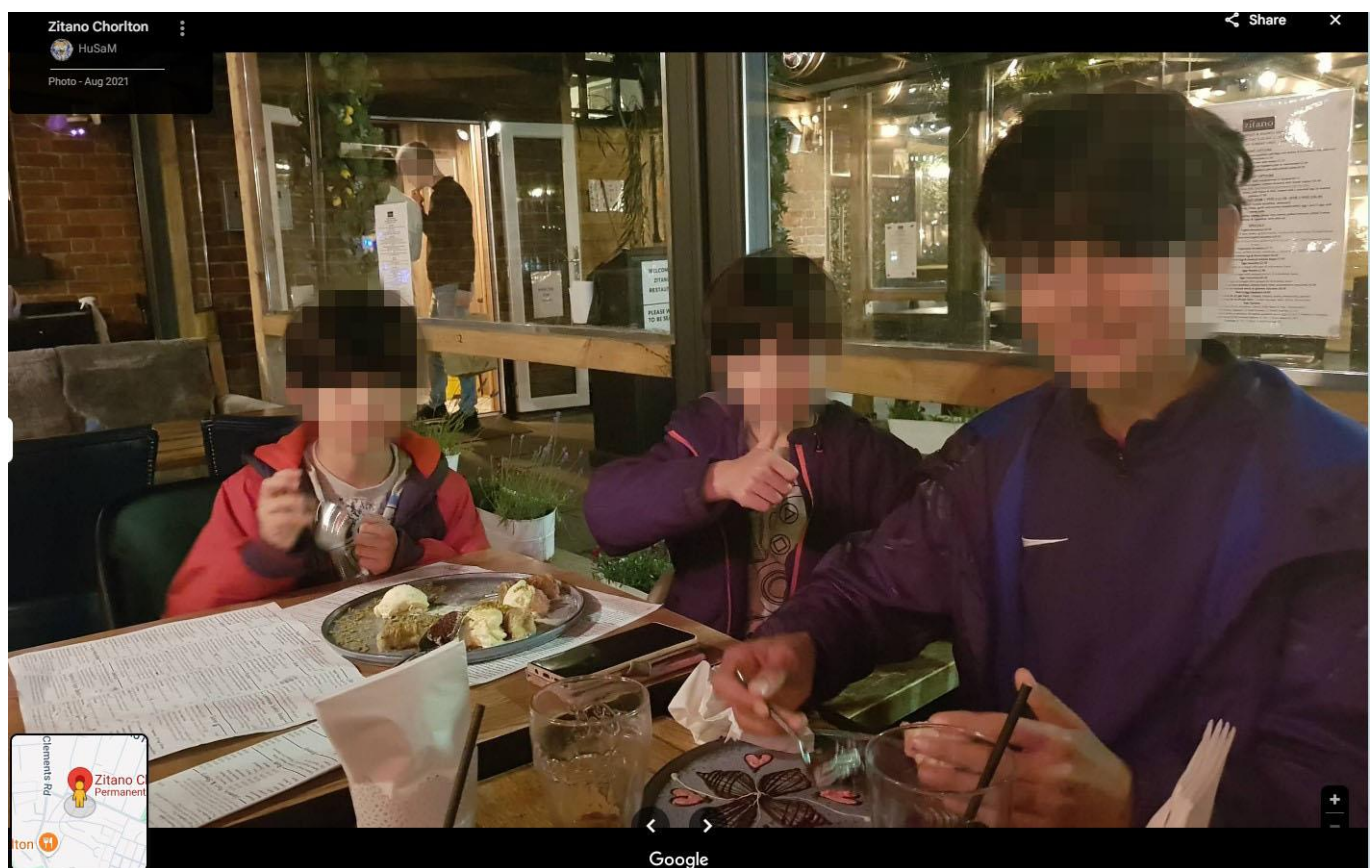


Image 8 Google Review image captured August 2021

Image 9 shows customers enjoying what appears to be a 60th birthday celebration in October 2021 and shows that the structure now significantly enclosed, with the stallrisers (left of the image) having now been installed with no timber being visible.



Image 9 Google Review image captured October 2021

Based on the evidence provided, the applicant has not sufficiently demonstrated that the single-storey timber structures were substantially completed by 2 January 2021 and remained in situ and unchanged for four years until 15 January 2025. The provided images and statements lack clarity and corroboration from additional sources.

Furthermore, the images from June 2021 to August 2021 indicate that the structure was not fully complete during this period, contradicting the applicant's claim. It appears that the structures were substantially completed by October 2021; therefore, the structure would have been substantially complete prior to 25 April 2024, and the change to the immunity provisions and the applicant would therefore need to satisfy a 4-year period.

Therefore, the application does not meet the requirements for a certificate of lawfulness, and it should be refused.

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 the single storey timber structures providing covered seating and entrance to the restaurant, were substantially complete more than four years before the date of the application.

Appendix 1 – List of consultees & neighbours notified

129 Beech Road, Manchester, M21 9EQ
68A Beech Road, Manchester, M21 9EG
18 Stanley Grove, Chorlton, Manchester, M21 9DT
52 Stockton Road, Manchester, M21 9ED
52A Stockton Road, Manchester, M21 9ED
135 Beech Road, Manchester, M21 9EQ
19 Stanley Grove, Chorlton, Manchester, M21 9DT
Flat 6, 35 Stockton Road, Manchester, M21 9FB
Flat 5, 35 Stockton Road, Manchester, M21 9FB
Flat 3, 35 Stockton Road, Manchester, M21 9FB
Flat 2, 35 Stockton Road, Manchester, M21 9FB
Flat 4, 35 Stockton Road, Manchester, M21 9FB
Flat 1, 35 Stockton Road, Manchester, M21 9FB
Flat 3, 131 Beech Road, Manchester, M21 9EQ
Flat 2, 131 Beech Road, Manchester, M21 9EQ
Flat 1, 131 Beech Road, Manchester, M21 9EQ

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Conservation Area - Chorlton Green Conservation Area 1970
Conservation Area - Chorlton Green (Extension) Conservation Area 2007
Historic Landfill Site 250m Buffer -
Area Team Boundary - Name: SOUTH AREA