

<b>Application Number</b>	<b>Date of Appln</b>	<b>Committee Date</b>	<b>Ward</b>
099214/JO/2012/S1	9th May 2012	28th Jun 2012	Chorlton Ward

**Proposal** Variation of condition no. 2 attached to planning approval 084595/JO/2007/S1 to extend opening hours to 11.00 am to 02.00 Monday to Tuesday, 11.00 am to 03.00 am Wednesday to Thursday, 11.00 am to 4.00 am Friday to Saturday and 11.00 am to 03.00 am Sunday

**Location** 450 Wilbraham Road, Chorlton, Manchester, M21 0AG,

**Applicant** Mr I Ahmed , 24 Dukes Avenue, Kingston Upon Thames, Surrey, KT2 5QY

**Agent** Mr T Edens, Planning Consultant, 29 Canford Close, Enfield, Middlesex, EN2 8QN

### **Description**

The application site relates to a mid terraced, ground floor unit within a three storey terraced parade, situated on the northern side of Wilbraham Road.

The premises currently operates as a (Class A5) hot food takeaway (Dixy Chicken) within the heart of Chorlton District Centre. The property is adjoined on one side by a (Class A1) shop (Cash Generator) and the other by a (Class A5) hot food takeaway (Zam Zam). As expected for a district centre, the surrounding area is mixed use in nature comprising of a variety of small-scale commercial activities. The side roads off Wilbraham Road, including properties to the rear of the application site are largely residential in character.

The proposal relates to a variation in opening hours for the existing hot food takeaway. This would allow the business to operate between 11.00am and 2.00am Monday to Tuesday, 11.00am to 3.00am Wednesday to Thursday, 11.00am till 4.00am Friday to Saturday, and 11.00am to 3.00am Sunday. The present authorised hours allow the business to operate 11.00am to 01.00am Sunday to Thursday and 11.00am to 02.00am on Fridays and Saturdays.

### **Consultations**

Local Residents/Occupiers - No representations received.

Chorlton Civic Society - Object to the proposal on the basis that the extended opening hours are excessive, could cause noise nuisance for residents nearby and would create a precedent for other applications from further establishments to remain open late at night until early morning hours.

Environmental Health - Comments to be reported as a late representation.

Licensing Business Unit - Have received a premises licence application to extend the permitted hours, in line with those submitted with their planning application. The Licensing Authority has not objected to the licensing application, and has no plans to object to the planning application. However, did receive objections from; GMP, Environmental Health, two ward councillors and one local resident. The application is due to go before the licensing committee on 24th July 2012.

Highways Development Management - No objection.

Greater Manchester Police (Design for Security) - Expressed reservations about the late opening of this take-away.

Extending the opening hours of such premises can harm the amenity of the occupiers of nearby residential accommodation by virtue of increased noise and disturbance arising from the raised voices of customers coming and going, and taxis drawing up and driving off. Whilst amenity may not be directly related to security, it would not be unusual for local residents to rely on the Police to intervene in any disturbances that might arise. In addition, late night opening premises can also be a focal point for crime and disorder, particularly when open beyond the hours of nearby licensed premises, and can encourage customers to remain in an area when they may be better engaged heading home. Again, the Police may be called upon to resolve any issues.

Ward Member, Councillor Sheila Newman - "I wish to make comments on this application. I am opposed to take aways being open till 4am, as I believe it will have a negative impact on nearby residents who will be disturbed in the middle of the night. The proposed hours are excessive and are not responding to community need. Residents are already disturbed by people using the take aways in the early hours of the morning and 3am on Wednesdays, Thursday and Sundays and 4am on Fridays and Saturdays is unacceptable.

There are already problems with waste and litter associated with take aways in this area and any extra opening hours will make this worse.

Please ensure my views are included in the report to the Planning Committee."

Ward Member, Councillor Victor Chamberlain - "I wish to object to the above planning application.

The proposed opening hours are significantly later than comparable businesses in the area and I am deeply concerned about the impact these late opening hours could have on the local area. It is my view that these opening hours could potentially present a significant disamenity to local residents and threaten the licensing objectives.

Proposed opening hours until 4am have the potential to encourage and exacerbate crime and disorder; threaten Public Safety ; encourage anti social behaviour and public nuisance. Chorlton has recently experienced numerous raids on late night premises and these trading hours would make this premises susceptible to such a problem. The proposed opening hours could potentially encourage crowds to

congregate, late night fights and affrays and general vandalism which can also potentially pose a threat to public health.

The proposed hours could potentially also create a public nuisance in a residential area as there will be excessive noise, light, unpleasant smells, litter and public urination in the early hours. There has recently been an issue of businesses leaving commercial waste in the alley behind Wilbraham Road and on Keppel Road and this application could exacerbate this problem.

I also believe that the proposed hours will encourage people to travel from further afield than they would otherwise for late night refreshments. As a result it may exacerbate existing parking problems and encourage inconsiderate and dangerous parking. There is already a serious problem of taxis and cars parking on double yellow lines along Wilbraham Road and I believe this application could make this situation worse.

I am also concerned about the precedent such late Opening hours could present.

I would like to request that when the Planning Committee consider this application they are made aware of the opening and trading hours of similar businesses in Chorlton District Centre."

### **Issues**

National Planning Policy Framework - Appendix 1 Paragraph 214 of the National Planning Policy Framework states that for 12 months from the day of publication of the NPPF, decision takers may continue to give full weight to relevant policies adopted since 2004, even if there is a degrees of conflict with the Framework.

The Regional Spatial Strategy and Unitary Development Plan policies were saved by way of direction in 2007 under paragraph 1 (3) of Schedule 8 to the Planning and Compulsory purchase Act 2004. In light of this, full weight may be given to the policies within the Regional Spatial Strategy and Unitary Development Plan.

In addition, Appendix 1 of the NPPF (paragraph 216) states that decision takers may also give weight to relevant policies in emerging plans according to the state of preparation and the degree of consistency to the policies in the National Planning Policy Framework. The closer the policies in the emerging plan to the policies in the National Planning Policy Framework the greater the weight that may be given.

Unitary Development Plan - The relevant policies are:

H2.2 The Council will not allow development which will have an unacceptable impact on residential areas. The matters which the council will consider in coming to such decisions will include the scale and appearance of the development and its impact in terms of noise, vibration, traffic generation, road safety and air pollution.

E1.4 The Council will control noise levels by:-

a) ensuring that new development involving high noise levels is not permitted where it would be likely to cause a nuisance to occupiers of nearby properties;

DC10.1 In determining planning applications for developments involving the sale of food or drink for consumption on the premises, or for hot food to be consumed off the premises (whether or not other activities, such as a nightclub, are included), the Council will have regard to:

- a. the general location of the proposed development, including any reference to the area in other policies in the Plan;
- b. the effect on the amenity of neighbouring residents;
- c. the availability of safe and convenient arrangements for car parking and servicing;
- d. ease of access for all, including disabled people; and
- e. the storage and collection of refuse and litter.

DC10.2 The Council will normally accept the principle of developments of this kind in the City Centre, industrial and commercial areas, in shopping centres and, at ground level, in local shopping parades of more than 8 shops or offices.

DC10.3 Development will not normally be permitted where:

- a. it is proposed outside the general locations mentioned above, or
- b. there is a house or flat on the ground floor next to the proposed business, or only separated from it by a narrow street or alleyway.

DC10.4 Where, having regard to the preceding policies, the Council considers the proposed development to be acceptable in principle, conditions may be imposed in order to protect the amenity of nearby residents. These conditions may, amongst other things, include limitations on the hours of opening, and the need to deal satisfactorily with noise, fumes, smells, storage of refuse and the collection of litter.

Policy DC26 seeks to reduce the impact of noise generating development. The Council will consider the effect of new development proposals and the implications of new development being exposed to existing noise sources. Developments likely to result in unacceptably high noise levels will not be permitted.

#### Local Development Framework

The principal document within the framework is the emerging draft Core Strategy which sets out the spatial vision for the City and includes strategic policies for development during the period 2012 - 2027.

On the 18th July Manchester City Council submitted its Core Strategy Development Plan Document to the Secretary of State for independent examination, following the Publication consultation stage in February and March 2011. A hearing (examination in public) to examine the Core Strategy was held in November 2011 with the anticipated adoption being in July 2012. On 26th March 2012 the Inspector recommended adoption of the Core Strategy with some modifications. Core Strategy policies therefore have substantial weight in the consideration of this planning application.

The following policies within the proposed Core Strategy are considered relevant:

Policy C6 states redevelopment in Chorlton will provide a substantial increase in retail, alongside improvements to other commercial and community services. New development should also make a contribution to the character of the centre, including a range of unit sizes and environmental improvements.

Policy DM1 states that new development should have regard to more specific issues for which more detailed guidance may be given within supplementary planning documents. Issues include: the appropriate siting and appearance of development, the impact upon the surrounding area, the effects on amenity, accessibility, community safety and crime prevention, health, the adequacy of internal accommodation and amenity space and refuse storage/collection.

Regional Spatial Strategy - In terms of regional policy, it is not considered that any policy is of particular relevance in this case.

The central theme to the NPPF is to achieve sustainable development. The Government states that there are three dimensions to sustainable development: an economic role, a social role and an environmental role (paragraphs 6 & 7).

Paragraphs 11, 12, 13 and 14 of the NPPF outlines a 'presumption in favour of sustainable development'. This means approving development, without delay, where it accords with the development plan and where the development is absent or relevant policies are out-of-date, to grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the NPPF.

Chorlton District Centre Action Plan (2010) - The action plan has been produced following research, public consultation and close working with key stakeholders and assesses the strengths, weaknesses, opportunities and challenges for the Chorlton District Centre. The Action Plan contains policy aspirations for the City and identifies the short, medium and long-term actions necessary to create a strong, vibrant and successful district centre.

South Manchester Strategic Regeneration Framework (SRF) (2007) - This document encompasses City Council policy aspirations on how the south of the city will be developed and delivered through a new policy framework that will guide long term regeneration and neighbourhood renewal. It provides an approach that responds specifically to the social, economic and physical needs of the South Manchester area, guiding the activities of the Council, other public sector agencies and investment by the private sector.

Principle - Whilst the premises is located within the district centre within a principal commercial frontage, it should be noted that the hours proposed are inconsistent with others in the area, including those within the same parade, it is believed that the hours proposed are excessive and are likely to give rise to material, adverse living conditions for nearby residential occupiers and would also set an unacceptable precedent if approved, giving rise to further premises applying for the same hours, thereby having an even greater negative, cumulative effect.

The proposal has the potential to change the balance of activity within the centre by creating a greater emphasis on night time activity thereby being contrary to the objectives within policy C6 of the emerging Core Strategy and policy DM1 by virtue of the potential impact upon amenity and community safety and crime prevention and policies H2.2, E1.4, DC10, DC26 of the Unitary Development Plan (UDP) by virtue of the potential for loss of amenity due to noise disturbance.

**Residential Amenity** - The premises are abutted by residential properties to the rear on Keppel Road and residential uses are located above the shops within the immediate locality. Whilst this use already results in a certain degree of residential disamenity it is considered, the proposal would introduce a new level of potential disturbance, which cannot be supported, thereby, contrary to policies H2.2 and DC10 of the UDP and DM1 of the Core Strategy.

**Anti-social behaviour** - Whilst criminal and anti-social activity is a matter for the Police, there is the potential for the proposal to generate additional noise disturbance late at night and this is material to the consideration of this planning application. Given the Police's concerns regarding the potential for such problems the proposal is contrary to policies H2.2 and DC10 of the UDP and policy DM1 of the CS.

**Noise** - The development would have a particular impact due to the proximity of the premises to neighbouring residential uses and the potential for noise and sleep disturbance in the early hours of the morning. The noise disturbance would extend for longer periods than is currently experienced.

Noise disturbance is not only attributed to the congregation of patrons of the premises, but also the more general movement of pedestrians, vehicles and the slamming of car doors etc. The noise would extend for longer periods than currently experienced, therefore contrary to the provisions of policies H2.2, E1.4, DC10 and DC26 of the UDP and policy DM1 of the Core Strategy.

**Litter** - Whilst this issue may partially be addressed by condition, it is considered that the proposal would potentially produce additional litter to the detriment of the environmental quality of the area.

## CONCLUSION

The proposal would significantly affect residential amenity and potentially exacerbate existing problems of noise disturbance and anti-social behaviour. The proposal would therefore be contrary to policies H2.2, E1.4, S2.4 and DC26 of the UDP, policies C6 and DM1 of the Core Strategy, and the National Planning Policy Framework.

**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 the right to a fair hearing and to this end the Committee 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 Unitary Development Plan, the Head of Planning 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. He believes that any restriction on these rights posed by the refusal of the application is proportionate to the wider benefits of refusal and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

## **Recommendation REFUSE**

### **Reason for recommendation**

1) The proposal would have a detrimental impact on the amenity of neighbouring residents, particularly in relation to those residing on Keppel Road, due to the increase in the comings and goings to and from the property, and associated noise, disturbance and increase in traffic later at night and on Sundays, contrary to policies H2.2, E1.4, S2.4 and DC26 of the Unitary Development Plan for the City of Manchester (1995), policies C6 and DM1 of the emerging Core Strategy Development Plan Document (Publication Consultation Document February 2011), and the National Planning Policy Framework.

### **Local Government (Access to Information) Act 1985**

The documents referred to in the course of this report are either contained in the file(s) relating to application ref: 099214/JO/2012/S1 held by planning or are City Council planning policies, the Unitary Development Plan for the City of Manchester, national planning guidance documents, or relevant decisions on other applications or appeals, copies of which are held by the Planning Division.

### **The following residents, businesses and other third parties in the area were consulted/notified on the application:**

569 Wilbraham Road, Manchester, M21 0AE  
565 Wilbraham Road, Manchester, M21 0AE  
567 Wilbraham Road, Manchester, M21 0AE  
5 Keppel Road, Manchester, M21 0AT  
9 Keppel Road, Manchester, M21 0AT  
448A Wilbraham Road, Manchester, M21 0AG  
446 Wilbraham Road, Manchester, M21 0AG  
448 Wilbraham Road, Manchester, M21 0AG  
452 Wilbraham Road, Manchester, M21 0AG  
Flat 1, 7 Keppel Road, Manchester, M21 0AT  
Flat 2, 7 Keppel Road, Manchester, M21 0AT  
Flat 3, 7 Keppel Road, Manchester, M21 0AT  
452A Wilbraham Road, Manchester, M21 0AG  
571 - 575 Wilbraham Road, Manchester, M21 9AF  
First Floor And Second Floor, 571 Wilbraham Road, Manchester, M21 1AE

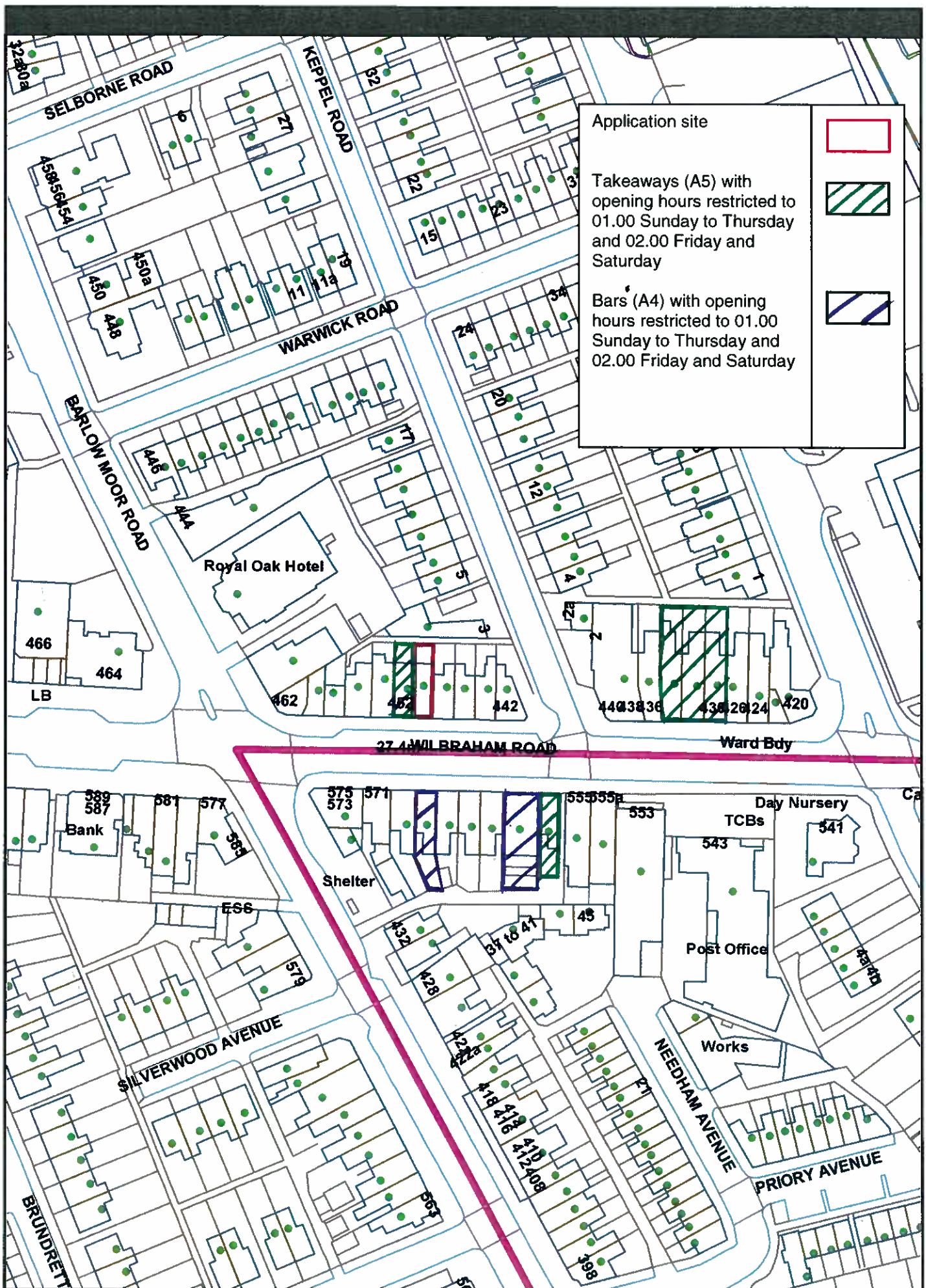
Ground Floor, 454 Wilbraham Road, Manchester, M21 0AG  
First Floor And Second Floor, 454 Wilbraham Road, Manchester, M21 0AG  
571 Wilbraham Road, Manchester, M21 1AE  
452B Wilbraham Road, Manchester, M21 0AG  
Flat 1, 446 Wilbraham Road, Manchester, M21 0AG  
Flat 2, 446 Wilbraham Road, Manchester, M21 0AG  
450A Wilbraham Road, Manchester, M21 0AG  
450B Wilbraham Road, Manchester, M21 0AG  
1 Keppel Road, Manchester, M21 0AT  
3 Keppel Road, Manchester, M21 0AT

**Representations were received from the following third parties:**

Chorlton Civic Society  
Greater Manchester Police, Design for Security

**Relevant Contact Officer :** Melanie Tann  
**Telephone number :** 0161 234 4538  
**Email :** m.tann@manchester.gov.uk





**MANCHESTER**  
CITY COUNCIL

JULIE ROSCOE  
HEAD OF PLANNING  
CHIEF EXECUTIVES DEPARTMENT

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