

**KIRKLEES METROPOLITAN COUNCIL  
INVESTMENT & REGENERATION SERVICE**

**DEVELOPMENT MANAGEMENT**

**Town and Country Planning Act 1990 (as amended) Section 191/192**

**DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF  
LAWFUL DEVELOPMENT**

Reference no.: 2022/CL/91668/W

Site: 31, Midway, South Crosland, Huddersfield, HD4  
7DA

Description: Certificate of lawfulness for proposed use of  
dwelling for vegan cookies and bakes business (within a Conservation Area)

Case Officer: Tom Hunt

**Decision Reference: PROPOSED USE GRANT**

**I hereby authorise the approval of this application for the reasons set  
out in the officer's report and recommendation annexed below in  
respect of the above matter.**

Kevin Walton

**AUTHORISED OFFICER**

**Date 22-Jul-2022**

## **Officer Report**

**2022/91668 – 31, Midway, South Crosland, Huddersfield, HD4 7DA**

### **Site Description**

No. 31 is a detached bungalow in South Crosland. It has a driveway sufficient for two off street parking and garage.

### **Description of Proposal**

The proposal is for a Certificate of Lawfulness for the proposed use of dwelling for vegan cookies and bakes business (within a Conservation Area). The basis for making the application is that it is within the existing family kitchen and would therefore not be a material change of use.

It is proposed that there be one or two batches of cakes, cookies, cupcakes and brownies made on a daily basis between Monday to Friday 4 hours a week.

This is in the existing kitchen facing fields with an extractor fan above the hob and the duct goes out to the rear of the property. Otherwise ventilation would be by existing windows and the detached property is within a large plot (1.8m separation distance to northwest boundary and 6.5m separation distance to the southeast boundary approximately). Odours would be of baking with no anticipated fatty, fishy or oily nature.

Raw materials would be stored in containers separate from household in a separate fridge in a spare room within the house used for storage.

Preparation is with an electric domestic mixer, hob and oven. Once baked those would be left to cool on work top then stored in air tight containers.

There would be minimal waste due to measuring ingredients. Once baked, excess produce would be given away or be in the black bin. Recyclable waste would be in the green bin.

Deliveries would be via Royal Mail or DPD with products sold online. The applicant confirmed in email received 22/07/2022 that there would be no collection encouraged or offered, delivering any local orders themselves.

### **History of negotiations/amendments received**

30/05/2022 – Additional information requested by the Officer and supplied.

22/07/2022 – Additional information requested by the Officer on collection.

### **Relevant Planning History**

None relevant to this application.

## **Representations**

No publicity is required for applications of this type.

No representations have been made.

## **Consultation Responses**

None required.

## **Legal background information**

Section 192(1) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any operations or proposed use of buildings or other land would be lawful to make an application to the Local Planning Authority.

Section 192(2) of the Act provides that uses are lawful if the Local Planning Authority is provided 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.

The Lawful Development Certificate System provides the possibility of obtaining a statutory document confirming that the use, operation or activity named in it is lawful for planning purposes on the dates specified in the document. Once it is granted, the certificate remains valid for the use or development described in it, on the land it describes, provided there is no subsequent material change in the circumstances.

The grant of a certificate applies only to the lawfulness of development carried out, or proposed, in accordance with the Planning legislation.

A certificate granted for a proposed use or operation will describe the precise use or operation on a site in the terms considered permissible without the need to make a planning application for it.

Section 191(2) of the Act states that “For the purposes of this Act, uses and operations are lawful at any time if:-

- a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- a) they do not constitute a contravention of any of the requirements of any enforcement notice then in force”.

Therefore if the Local Planning Authority is satisfied on balance, and having regard to the above sections read together, that no enforcement action could be taken because the proposed change of use would not constitute “development” involving a material change of use of the dwelling, a certificate should be issued on the grounds that the change does not constitute development. Otherwise the application should be refused.

### **The Relevant Test:-**

The burden of proof lies firmly with the Applicant and the relevant test for whether the use can be deemed lawful is the “balance of probability”.

Paragraph 006 of National Planning Policy Guidance (Lawful Development Certificates) outlines that the applicant’s evidence does not need to be corroborated by “independent” evidence. If the Local Planning Authority has no evidence of their own, or 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.

### **Limitations:-**

A Lawful Development Certificate must contain precise details of what use or operations are found to be lawful, why and when. These details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to the point where a “material” change of use takes place, a Local Planning Authority may then consider further development has taken place.

### **Assessment**

As the application is for a Certificate of Lawfulness, the planning merits of the case do not fall to be considered. The Local Planning Authority must assess whether or not the proposed use would constitute “development” involving a material change of use of the dwelling house.

The applicant’s stated grounds for making the application are that cooking is to take place in the existing kitchen, which is already used for cooking, and that no material change of use would therefore have occurred.

It is accepted that the proposed development involves no building or engineering operations, nor would it give rise to any material change to the external appearance of the building. However, a material change of use can be said to have occurred if a change to the character of the building or land

occurs as a result of increased noise, odours, or of vehicular or other activity at the property.

On the basis of the information supplied by the applicant, the proposed catering use would appear to be very small-scale. It is understood that the storage of ingredients and the processing and cooking of food would take place in the existing domestic kitchen and that most of the living accommodation within the dwelling would be unaffected by the change of use. It appears that waste generation and the number of vehicular journeys, which would be limited by online sales would not be significantly in excess of what would be considered normal for a domestic property; the applicant has confirmed that there are off street parking within premises available for deliveries to the property once a month/fortnight and outgoing dispatches limited to two a day with minimal impact on highways and residential amenity. Any local orders would be delivered by the applicant themselves. In view of the generally low traffic levels on this street, it is on the whole considered that parking within the premises, if for very short periods, would unlikely to pose any significant safety risk or change the character of the dwellinghouse. So, in conclusion, it is considered unlikely that the proposed use would give rise to a significant increase in on-street parking as against the existing residential use.

The cooking operation would, necessarily, discharge cooking odours into the atmosphere – it is possible that these would be detected by neighbouring properties if they had their windows open. But given the amount of food cooked within a short baking period, it is considered that the odours released would be very unlikely to have an impact on residential amenity, and in effect would not be significantly different to someone cooking for a large family. Similarly, noise levels are not expected to increase significantly as no specialised catering equipment would need to be installed as confirmed by the applicant.

It is concluded that, provided that the proposed use is carried on in the manner described in the supporting information, the character of the property would to all practical intents and purposes be that of a dwelling house, and no material change of use would have occurred. If, however, the scale or nature of the use changes with time, so that, for example, a greater number of delivery runs are undertaken, then a material change of use could be deemed to have occurred and the need to seek planning permission might then arise.

## **Conclusion**

On the basis of the evidence submitted in support of the application, the Council is satisfied that the evidence supports, on the balance of probabilities, the applicant's claim that the use of the property for the preparation and cooking of meals for delivery would be lawful, as there would, as a matter of fact and degree, be no material change of use.

## **Recommendation – GRANT CERTIFICATE OF LAWFULNESS**

**Proposed use of premises for preparation and cooking of up to 2 batches of cakes, cookies, cupcakes and brownies made on a daily basis between Monday to Friday 4 hours a week, using existing domestic kitchen, and raw materials stored within the existing house and a majority of products sold online with deliveries by parcel services or locally by the applicant.**

## Decision Authorisation - Delegated Powers

**Application Number:** 2022/91668

**Officer Recommendation:** GRANT CERTIFICATE OF LAWFULNESS

The Council hereby certify that on 21/07/2022 the use described in the first schedule thereto and noted below in respect of the land specified in the second schedule hereto and edged red on the plans attached to this certificate would be lawful within the meaning of Section 55 of the Town and Country Planning Act for the following reasons:

The use of the dwellinghouse for the cooking and delivery of vegan cookies and bakes would not constitute a material change of use of the building as defined by section 55 of the Town and Country Planning Act 1990.

NOTE: The proposed use of premises is considered ancillary to the enjoyment of the dwellinghouse as such and based upon the applicant's description as the preparation and cooking of up to 2 batches of cakes, cookies, cupcakes and brownies made on a daily basis between Monday to Friday 4 hours a week, using existing domestic kitchen, and raw materials stored within the existing house and a majority of products sold online with deliveries by parcel services or locally by the applicant. The use consists of no more than one delivery of goods to the property per fortnight and no more than 2 dispatches by the applicant from the dwellinghouse per day. No customers are proposed to collect from the premises.

Plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Application form	-	-	16/05/2022
Location plan	-	-	20/05/2022
Supporting information	Additional information received on Environmental Health	-	30/05/2022
Supporting information	Email from applicant confirming no collection	-	22/07/2022

**Report Dated:** 22/07/2022