

**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.: 2025/CL/93202/E

Site: 106, Upper Road, Batley, WF17 7LR

Description: Certificate of lawfulness for proposed food
business within residential dwelling

Case Officer: Laura Yeadon

Decision Reference: PROPOSED USE REFUSED

**I hereby authorise the refusal 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 21-Jan-2026

Officer Report

[Weblink](#)

Reference: 2025/93202

Applicant: A Muhammad

Location: 106, Upper Road, Batley, WF17 7LR

Proposal: Certificate of lawfulness for proposed food business within residential dwelling

Site description:

The site relates to a mid-terraced property which appears to have formally been a back-to-back dwelling, The property fronts Upper Road which has traffic restrictions in the form of double yellow lines along the entire terraced road and beyond. Access to the rear of the property is off Pickles Street which is an adopted highway with unrestricted parking.

Surrounding development is comprised of mainly residential properties to the north, south and west with commercial buildings to the east, beyond the properties within the terraced row and Pickles Street

Description of development:

The application seeks a Certificate of Lawful Development for a proposed hot food preparation, delivery and collection business operating within a residential dwelling.

The submitted information within the application form states that it is proposed to operate a small-scale home food business from the existing kitchen within the property.

It goes on to states that no commercial machinery of ventilation systems will be installed and the scale of operation would be low and comparable to normal domestic cooking, with no significant noise, odour or traffic impact. Also, all preparation would take place using standard household kitchen appliances only.

The use would involve the preparation of cooked foods/desserts for collection or delivery with the proposed operating hours being:

Monday to Thursday – 6:30pm to 8:00pm

Friday to Sunday – 6:30pm to 11:00pm

The application states that customers will not enter the building although details relating to the number of customers, number of meals or the specific type of

food (other than cooked food/desserts), parking arrangements or number of employees, including delivery workers have been submitted.

The application form confirms that the proposed use has not yet commenced.

Representations:

We are currently undertaking statutory publicity requirements, as set out at Table 1 and Table 2 in the Kirklees Development Management Charter.

This application has been available on the Kirklees Website for public view.

No representations have been received.

Consultation responses:

No consultations were deemed necessary for this proposal as it is an application for a Lawful Development Certificate.

Relevant Policy/Legislation:

The Town and Country Planning (General Permitted Development) (England) Order 2015

Assessment:

Section 191(1) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any operations or existing use of buildings or other land would be lawful to make an application to the Local Planning Authority.

Section 191(2) of the Act provides that uses are lawful if:

1. 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 taking enforcement action has expired or for any other reason);
2. They did not constitute the contravention of any of the requirements of any enforcement notice then in force.

For the purposes of the Act a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force. Section 191(2) (b) states that the inability to take enforcement action may come about because the use did not involve development, or because it did not require planning permission, or because the time for taking enforcement action has expired.

The relevant Test:

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

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 granting of a certificate on the balance of probability.

Limitations:

The LDC must contain precise details of what use or operation are found to be lawful, why and when. The 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, Local Planning Authority may then consider further development has taken place.

Relevant Planning History:

2024/90868 Erection of 2 storey rear extension – refused

2024/95611 Erection of 2 storey rear extension – conditional full permission

Evidence submitted in support of the application:

- Application form – ref: PP-14494998
- Location plan – ref: PP-1449499v1
- Block plan – ref; TQRQM25321212509654

Evidence submitted against the application:

None

Evidence obtained from Council Records and other sources:

- Kirklees Council gazetteer
- Kirklees Council website
- Google Earth

Site visit:

None required

Assessment:

The application has been submitted by the applicant on the basis that *'the existing and current use of the property as a normal residential home (C3 dwelling) and that it has always been used as a family home and this residential use continues now.'* The Council has no evidence to suggest the building cannot currently be lawfully used as a dwellinghouse.

An examination of the evidence submitted on behalf of the applicant follows.

As the application is for a Certificate of Lawful Development, the planning merits of the proposed use do not fall to be considered. The crux of the application is for the Local Planning Authority to assess whether or not the proposed use would constitute "development" involving a material change of use of the dwellinghouse.

In this case, the applicant has detailed that the use would involve the preparation of cooked food/desserts for collection or delivery from the property. The proposed operating hours being Monday to Thursday from 6:30pm to 8:00pm and Friday to Sunday 6:30pm to 11:00pm.

No details have been submitted relating to the number of customers, number of meals or the specific type of food (other than cooked food/desserts), parking arrangements or number of employees, including delivery workers. It is also unclear from the information provided as to whether the operating hours are limited to just the preparation and cooking of food or whether the hours relate to when the use is operational for collections and deliveries.

Section 55 of the Act provides that a material change of use of land or building would involve the carrying out of development. Section 57 provides that planning permission is required for development unless the development is exempted by a series of circumstances. In this instance, the proposed use does not fall into those exemptions. Consequently, if the proposed use is considered to be a material change of use from the existing use then planning permission would be required.

The existing use in this case is considered to fall into Use Class C3 (dwellinghouse) of Schedule 1 as defined by the Use Classes Order 1987. It is proposed to serve cooked food/desserts for collection or delivery from the property to be consumed off the premises. It is unclear as to whether or not the primary use proposed to operate would be the provision of hot or cold at the time of leaving the premises. If the main use involved the preparation of cold food to be sold from the premises then the proposed use would likely fall into Class E of Schedule 2. However the application form states that food will be cooked and as such the use could likely result in the premises being used as a hot food takeaway which is expressly defined to not fall into any use as specified in Schedule 1 or 2 and this considered to be a sui generis use. In either case, a change of use to either hot or cold food takeaway is deemed to be a change of use to a mixed use involving the preparation, delivery and collection of hot and a dwellinghouse and if it is considered that that a 'material' change of use is carried out, then planning permission would be required.

A material change of use can be said to have occurred if there is a change to the character of the building. In this instance the preparation of food, particularly hot food, for collection by visiting members of the public may change the character of the building as a result of increased noise, odours or activity at the property that would not be expected to be seen at a typical dwellinghouse.

Impact on the highway network

No details have been submitted in relation of the number of meals to be provided as to the expected number of vehicular trips per day/week anticipated by either the collection or delivery service. Nor has any information been submitted in relation to the number of employees, should the applicant employ delivery driver(s) or cooking assistants.

The application form states that the operation would not generate significant noise, odour, traffic or any other impacts that would materially change the character of the dwelling. It is also noted that customers would not enter the property however collections and deliveries from the property would be undertaken.

There is no evidence submitted as to the anticipated vehicle movements from both collections and deliveries or how these would be managed or how the comings and goings during the operational times provided within the application form would not result a constant flow of vehicles arriving, parking and then leaving the site. It has not been demonstrated how such activity would be no different to the vehicle movements one may expect at a typical dwellinghouse or how a stream of visiting customers and delivery driver(s) would not change the character of the dwellinghouse. At a dwellinghouse, it is expected that vehicle movements would be low and restricted to general day to day comings and goings. It is also noted that there are 'no parking' restrictions to the front of the property and within the immediate vicinity.

As the details of activity relating to the highway network is imprecise and ambiguous it is considered that it has not been demonstrated that the proposal would not give rise to a material increase in the number of vehicular journeys to and from the site, over and above that which might be reasonably expected for a residential property.

Odours

The description of food to be prepared at the property is described as the 'preparation of cooked food/desserts'. The operational hours have been included within the submission however it is unclear as to whether these hours are restricted to the collection and delivery of foods or whether this also includes the preparation/cooking of food. It is not known as to the number of meals which would be prepared/cooked. The applicant has stated that no commercial machinery or ventilation systems would be installed and that the operation would not generate significant odour.

The cooking of food does infer a degree of hot food to be prepared and provided. However, there is no evidence to show how the number of meals/dishes would be controlled and whether this would solely be undertaken during the proposed operational hours. Depending upon whether or not scheduled or pre-ordered collections and deliveries would take place, or how the food would be ordered, it is likely that the cooking and/or preparation of food would be undertaken which would lead to odour emanating from the kitchen particularly in the summer months when doors/windows are likely to be open. This would be considered a more intensive use of the dwellinghouse over and above that compared to the preparation of food when compared to a typical family which would be limited to meal times. Moreover, as the operation hours indicate that these would be until 11:00pm on Fridays to Sundays, the cooking of food and the collection by customers would result in vehicles movements/noise/activity/odours at times occurring at times not typically seen at a dwellinghouse. This is not considered to be ancillary to the main use of the property as a C3 dwellinghouse and would result in the introduction of a use of a materially different character thus materially changing the use of the dwellinghouse to a mixed use as a dwellinghouse and a hot/cold food take-away.

Conclusion:

The evidence provided by the applicant is imprecise and ambiguous and does not demonstrate that the preparation of cooked foods/desserts for visiting members of the public (collections) and delivery driver(s) is ancillary to or does not lead to a material change of use of the dwellinghouse.

As cited within a recently published appeal (reference APP/Z4718/X/25/3365582):

'The kind of sufficiently precise information needed to assess the proposal would include the number of bedrooms in the property and/or the existing occupancy of the dwellinghouse; the specific number of 'commercial' meals that would be prepared each day for the purpose of being consumed off the premises (as distinct from preparing meals for solely the family); the maximum number of deliveries and collections that would take place each day/week and how such appointments would be made; the type of food that would be cooked/made including technical details of any existing or proposed extraction system to be utilised'.....'the number and location of car parking spaces for members of the family and visiting members of the public; whether any part-time members of staff would be employed; and whether the proposal would have any implication in terms of the possible need/quantum of additional refuse storage and/or collection/disposal requirements relating to the appeal property..'

It goes on to state that *'In the absence of sufficiently precise information accompanying the LDC application, I am unable to properly assess and conclude whether the proposal would constitute a material change of use of the property from a dwellinghouse to a mixed dwellinghouse and commercial kitchen use. Moreover, the evidence does not precisely demonstrate that the*

proposal would be incidental to the enjoyment of the primary use of the land as a dwellinghouse, or that it would not bring about a definable change.'

Therefore, due to the lack of precise information accompanying the submission, the LPA are unable to conclude whether a material change of use to the established C3 dwellinghouse would or would not occur.

Recommendation: Refuse Certificate

Decision Authorisation: - Delegated Powers

Application number: 2025/93202

Officer Recommendation: Refuse

Reason:

The evidence provided by the applicant is imprecise and ambiguous and does not demonstrate that, on the balance of probabilities, the preparation of cooked foods/desserts for visiting members of the public (collections) and delivery driver(s) is ancillary to or does not lead to a material change of use of the dwellinghouse as defined by Section 55 of the Town and Country Planning Act 1990.

Plan Type	Reference	Version	Date Received
Application form	PP-14494998		19 th November 2025
Location plan	PP-14494998v1		19 th November 2025
Block plan	TQRQM25321212509654		19 th November 2025

Dated: 12th January 2026