

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	2026/62/90709/E
Site Address:	15, Warwick Road, Batley, WF17 6BU
Description:	Change of use of part of existing residential kitchen to allow small scale home cooking for take away and delivery
Recommending Officer:	Elenya Jackson

DECISION – 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.

John Holmes

AUTHORISED OFFICER

Date: 6th May 2026

OFFICER REPORT

Site Description

15, Warwick Road, Batley, WF176BU is two storey mid terrace dwelling which immediately abuts the pavement and has no private amenity space to the rear.

The immediate building group is residential in nature; however, there are commercial properties to the east.

Description of Proposal

The site is subject to an enforcement complaint under application COMP/25/0011 and this has resulted in the submission of the current application.

The applicant is seeking permission for the change of use of the building to a hot food takeaway.

The planning statement includes details that the business would open between 12pm and 8pm Monday to Sunday including bank holidays.

The supporting statement says between 5-7 pre-orders are taken each day and details of how many would be delivered and picked up have not been specified.

There are no details of exterior alterations to the outbuilding or the provision of extract ventilation.

An advertisement has been erected on the front of the building but this would require a separate consent and does not form part of this application,

Relevant Planning History

Planning applications:

None

Enforcement:

COMP/25/0011: Change of use from dwellinghouse to mixed use dwellinghouse and commercial kitchen

History of negotiations

Kirklees Development Management Charter together with the National Planning Policy Framework and the DMPO 2015 encourages negotiation/engagement between Local Planning Authorities and

agents/applicants, this is only within the scope of the application under consideration. The use as a commercial kitchen has a number of significant issues, not least of which is the inappropriate location in a residential area along with highway safety. Further details have not been sought.

Representations

The application was advertised by neighbour letters, which expired on 30/04/2024

As a result of the above publicity, no representations have been received.

Consultation Responses

K.C Highways DM – informal discussion on 29.04.2026 no objection subject to conditions.

Policy & Legislation

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is UNALLOCATED on the Kirklees Local Plan Proposals Map

On 12th November 2019, the Council adopted a target for achieving ‘net zero’ carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

Kirklees Local Plan Policies

- **LP 1** – Achieving sustainable development
- **LP 2** – Place shaping
- **LP13** – Town centre uses
- **LP16** – Food & Drink uses and the evening economy
- **LP21** – Highway safety
- **LP22** – Parking
- **LP24** – Design
- **LP47** – Healthy, active and safe lifestyles

- **LP51** – Air Quality
- **LP52** – Environmental quality

Kirklees Council adopted supplementary planning guidance on Hot food Takeaways in September 2022 which now carries full weight in decision making. This guidance indicates how the Council will usually interpret its policies regarding such built development, although the general thrust of the advice is aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework (NPPF), requiring consideration in terms of public health, residential amenity and highway safety among other matters. As such, it is anticipated that this SPD will assist with ensuring enhanced consistency in both approach and outcomes relating to takeaways.

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published December 2023, and the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Chapter 2 – Achieving sustainable development
- Chapter 6 – Building a strong, competitive economy
- Chapter 8 – Promoting healthy and safe communities
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

A consultation draft of the National Planning Policy Framework (the Framework) was published on 16th December 2025. As a consultation, the document is at an early stage and subject to change. Accordingly, for the purposes of this application, no weight is given to the current consultation document.

Assessment

Principle of development:

Chapter 2 of the NPPF states that: *“Planning policies and decisions should play an active role in guiding development towards sustainable solutions...”*

Chapter 2 of the NPPF goes on to further state that objectives should: *“support strong, vibrant and healthy communities, providing the supply of housing*

required to meet the needs of present and future generations; and by fostering a well-designed and safe built environment...”

As the site is without notation on the Kirklees Local Plan, in line with the NPPF, Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.

In terms of changing the use to a commercial kitchen where food is prepared to be delivered and picked up, Policies LP13, LP16, LP24, LP51 & LP52 of the KLP are relevant, in conjunction with the Hot Food Take Away SPD and Chapters 8 & 12 of the NPPF.

Policy LP2 sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan. Policy LP24 of the KLP is relevant and states that *“good design should be at the core of all proposals in the district”*.

Policy LP2 also states that:

“All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the local plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes below...”

Town Centre Use

The application is for a change of use from residential accommodation to a Hot food takeaway which is a main town centre use as defined in the NPPF glossary.

Paragraph 91 of the NPPF requires planning authorities to *‘apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.’*

Paragraph 92 of the NPPF continues by stating;

When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

Part B of LP13 of the Kirklees Local Plan reiterates policy in the NPPF by requesting a sequential test for main town centre uses which are outside of the defined centre boundaries. It goes on to say, *‘Proposals which fail to pass the sequential test will not be supported’*.

The National Planning Policy Framework defines edge of centre locations as being those within 300m of a centre boundary. With the site being approximately 20 m away from the boundary of Batley Carr Local Centre, the site is an edge of centre location.

The applicant has not provided a sequential test with the application. Details regarding the requirements of the Sequential Test are outlined within Paragraph 9.12 of the Kirklees Local Plan which states that the following evidence needs to be provided:

- The business model for the development
- An appropriate catchment that the business would seek to serve in accordance with the Shopping Centre Hierarchy Table
- An appropriate audit trail of any sequentially preferable sites that have been discounted with a robust justification

On this basis, in the absence of the above information, it is considered that the proposed town centre use in this edge of centre location would have a detrimental effect on the vitality and viability of the nearby centres and would fail to accord with Policies LP2 and LP13 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework.

Impact on the local economy

Turning to Local Plan policy LP16 states that proposals of this nature (food and drink and the evening economy) should be supported, provided they are located within a defined centre.

Policy LP16 of the Kirklees Local Plan states “*In order to assess the potential harm of food and drink and licensed entertainment proposals on a centre, the following criteria will be considered with a planning application:*

- a) the number, distribution and proximity of other food and drink uses, including those with unimplemented planning permission in a particular centre; a. the impacts of noise, general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas;
- a) the potential for anti-social behaviour to arise from the development, having regard to the effectiveness of available measures to manage potential harm through the use of planning conditions and / or obligations;
- b) the availability of public transport, parking and servicing;
- c) highway safety;
- d) the provision of refuse storage and collection; and
- e) the appearance of any associated extensions, flues and installations.”

Proposals for food and drink uses and licensed entertainment uses located outside of defined centres will be subject to criteria b to g set out under Policy

LP16. The site is located outside of a defined town centre in the Kirklees Local Plan. Sub paragraphs b – g of Policy LP16 have been considered in more detail within the officer report.

In line with policy LP16, proposals for food and drink uses located outside of defined centres will require the submission of a sequential test and impact assessment. The proposal has not be supported by a sequential test.

In accordance with Policy LP13 and LP16 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework, Local Planning Authorities must apply a sequential approach to Main Town Centre uses that are not located within an existing centre. The applicant has failed to demonstrate, through submission of a sequential test, that the proposal would not harm the viability and vitality of nearby Town Centres.

Impact on visual amenity:

There are no alterations proposed as part of the application to the exterior of the outbuilding. As has previously been discussed, any advertisement consents would be required to be secured via a separate permission.

Having taken the above into account, the proposals would not cause any significant harm to the visual amenity of either the host dwelling or the wider street scene, complying with Policy LP24 of the Kirklees Local Plan and the aims of chapter 12 of the National Planning Policy Framework.

Impact on residential amenity:

HFT4 of the Council's adopted Hot Food Takeaway SPD sets out that noise attenuation and odour control measures must be acceptable in terms of visual amenity, including location and external finish, not adversely impact on neighbouring occupiers by virtue of noise / vibration or colour and remain appropriate to the type of food being prepared.

Policy LP52 is considered to be of relevance and sets out that development must be considered in relation to potential for increases from pollution, in this case the relevant possible increases could relate to noise, light & odour emissions.

Consideration in relation to the impact on the residential amenity of neighbouring occupants shall now be set out, taking into account policy LP24 c), which sets out that proposals should promote good design by, amongst other things, developments minimising impact on residential amenity of future and neighbouring occupiers.

The building in question is a two storey mid terrace dwelling. Cooking odours from take away type food cause a loss of amenity to the very close neighbouring properties which would be further exacerbated due to the terminus of any extraction on the single storey building being at a low height. This would mean dispersion would be at the height of opening windows to

nearby dwellings, it is also more likely that odours would dwell in the vicinity due to poor dispersion at low level. Indeed, at the time of the site visit, which took place at approx. 9:02am on Thursday 9th April strong cooking odours were present and experienced by the officer.

In accordance with HFTF 4, proposals for new hot food takeaways must demonstrate effective kitchen odour control and extract systems and appropriate noise attenuation measures. In relation to noise attenuation and odour control measures, no details have not been supplied to support the application.

The hours of operation are noted on the application form as being 12pm till 8pm on all week days. It is appreciated that this can be considered limited operation, unlikely to result in noise at antisocial hours. However, this does not overcome the issues identified in terms of odours / noise associated with any extract ventilation.

Having considered the above factors, the proposals result in adverse impacts in terms of noise and odours for the residents of the adjacent neighbouring occupants, thereby failing to comply with policies LP24 & LP52 of the Kirklees Local Plan, in terms of the amenities of neighbouring properties and Paragraph 135 (f) of the National Planning Policy Framework.

Impact on highway safety:

Paragraph 115 of the NPPF states that: "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." Policy LP21 of the Kirklees Local Plan echoes this. Policy LP22 of the Kirklees Local Plan relates to parking provision.

Policy LP16d) states that in order to assess the potential harm of food and drink proposals on a centre, consideration should be given to the availability of public transport, parking and servicing, whilst Policy LP16e) states that consideration should be given to highway safety for such developments.

The planning statement states that the site would operate every day of the week with between 5-7 pre-orders. KC Highways have considered that, subject to the imposition of a condition that the proposal would not provide more than 7 orders for collection/delivery, the use as a commercial kitchen would not be considered to be unacceptable in terms of highway safety.

Waste Storage/Collection and Littering

It is unclear from the submitted plans and information, how waste storage or facilities for the disposal of customer's litter can be accommodated within the application site. This would need to be adequately screened in a manner and location that does not detract from the street scene or the character of the area; or that does not cause odour nuisance to neighbouring occupiers. Therefore, in the absence of this information, it is considered that the proposal

could be harmful to visual and residential amenity contrary to Policies LP16, LP21, LP24 and LP52 of the Kirklees Local Plan and the aims of HFT5 the Council's Hot Food Takeaway Supplementary Planning Document.

Other matters:

Carbon Budget

The proposal is a small scale development to an existing property. As such, no special measures were required in terms of the planning application with regards to carbon emissions given the nature of the development seeking permission for change of use of the building.

Proximity to Schools

Policy HFT 3 of the Council's adopted Hot Food Takeaway SPD sets out the following:

Where planning permission is sought for a hot food takeaway (new or variation of condition) within 400m of the principal entry point to a primary (infant and/or junior or middle) or secondary school, and the proposal meets planning policy in all other respects, planning permission will only be permitted subject to the condition that opening hours are restricted to the following:

- *primary school (infant and/or junior or middle): the hot food takeaway is not open to the public between 3pm to 5pm weekdays and there are no over the counter sales during these times.*
- *Secondary school: the hot food takeaway is not open to the public before 5pm on weekdays and there are no over the counter sales before that time.*

The site falls within an identified 400m walkable route. This is in relation to Warwick Road Primary School.

Given the hours of use which are proposed, the proposal is not considered to accord with this policy. As such in the absence of any other material considerations which are considered to dictate otherwise it is considered the development would be not accord with this specific policy and not mitigating factors are considered to be present to outweigh this non compliance.

Impact on Public Health

The NPPF sets out that Planning policies and decisions should aim to achieve healthy, inclusive and safe places which enable and support healthy lifestyles, especially where this would address identified local health and well-being needs. Access to healthier foods is directly identified as a potential health and well-being need.

Also, of relevance to the consideration of this application is policy LP47 of the Kirklees Local Plan, this policy sets out that the Council will, with its partners, create an environment which supports healthy, active and safe communities and reduces inequality. This policy sets out this will be enabled by, amongst other things, working with partners to manage the location of hot food takeaways particularly in areas of poor health.

Kirklees Council has an adopted Hot Food Take Away SPD, which forms a significant material consideration. Policy HFT1 states that proposals for all new hot food takeaways will be assessed against the Kirklees Council Public Health Toolkit and that proposals which are not accepted by the toolkit will be refused unless other material considerations indicate otherwise.

To reflect the complexities of the obesogenic environment, the Public Health Team have developed a tool which uses a range of local data to assess which areas have multiple risk factors. These include the index of multiple deprivation (IMD), the percentage of adults, 5 year olds and 11 years olds either obese, overweight or with excess weight as well as the prevalence of diabetes and coronary heart disease rates. These indicators have been chosen to represent the health of the population living in a particular location.

Following a calculation of these rates in relation to the locality a finalised score is provided by the Public Health Toolkit. It is recommended that a hot food takeaway be refused when, across the seven indicators of deprivation, obesity and related health conditions, a score of more than 20 is achieved. In this case the site falls in an area which achieves a total score of 28 and would therefore fail to accord with policy HFT1 of the Kirklees Council Hot Food Takeaway SPD.

Therefore, given the indicators for this site, the proposal would fail to meet Policy LP47 of the Kirklees Local Plan, HFT1 of the Hot Food Take Away SPD and Chapter 8 of the NPPF. HFT2 of the Hot Food Takeaway SPD and Chapters 7 & 8 of the National Planning Policy Framework.

Representations:

None

Conclusion:

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. For the reasons set out above it is considered that the development would not constitute sustainable development and is therefore recommended for refusal.

Recommendation

Refuse

Decision Authorisation: Delegated Powers

Application Number: 2026/90709

Officer Recommendation: Refuse

Reasons for refusal

1. The development is for a hot food takeaway within 400m of the principal entry point to a primary school, specifically Warwick Road Primary School and proposed to operate between the hours of 3pm - 5pm on weekdays. The application has a combined score of 28 which would significantly exceed the recognised acceptable limits set out in the Council's Public Health Toolkit. The development would therefore have a detrimental impact in an area of Kirklees with an identified poor health need. As such, the proposal would fail to accord with Policy LP47 (j) of the Kirklees Local Plan, policies HFT1 & HFT3 of the Council's adopted Hot Food Take Away SPD and policies within Chapter 8 of the National Planning Policy Framework.
2. In accordance with Policy LP13 and LP16 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework, Local Planning Authorities must apply a sequential approach to Main Town Centre uses that are not located within an existing centre. The applicant has failed to demonstrate, through submission of a sequential test, that the proposal would not harm the viability and vitality of nearby Town Centres. Therefore, the proposal would be contrary to Policies LP2 and LP13 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework.
3. The applicant has failed to demonstrate that waste storage or facilities for the disposal of customer's litter can be accommodated within the application site such that this can be adequately screened in a manner and location that does not detract from the street scene or the character of the area; or that does not cause odour nuisance to neighbouring occupiers. Therefore, the proposal would be harmful to visual and residential amenity contrary to Policies LP16, LP21, LP24 and LP52 of the Kirklees Local Plan and policy HFT5 the Council's adopted Hot Food Takeaway Supplementary Planning Document.
4. By reason of insufficient information, the applicant has failed to demonstrate that the use of the site as a commercial kitchen with hot food prepared on site to be taken away, would not result in a harmful impact to the amenity of the occupiers of nearby residential units in terms of odour and noise. To permit the development would be contrary to Policies LP24 and LP52 of the Kirklees Local Plan HFT4, HFT5, & HFT6 of the Council's adopted Hot Food Takeaway Supplementary Planning Document and policies within Chapters 9, 12, 14 and 15 of the National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Web ID	Date Received
Application form	-		12/03/2026
Proposed plans			12/03/2025
Planning statement	-		12/03/2026

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. Due to the principle of the proposal being considered unacceptable and the application containing several omissions, amended plans have not been sought.