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## Appeal Decision

Site visit made on 11 September 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 SEPTEMBER 2025

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**Appeal Ref: APP/Z4718/X/25/3365582**

**182 Heckmondwike Road, Dewsbury, West Yorkshire, WF13 3NU**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Mohammed Sadiq (Yusuf food) against the decision of Kirklees Metropolitan Council.
  - The application ref 2024/CL/93447/E, dated 5 December 2024, was refused by notice dated 3 February 2025.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
  - The use for which a certificate of lawful use or development is sought is the proposed use of the premises for a commercial kitchen.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. For the avoidance of doubt, I make clear that the planning merits of the proposed use of the premises as a commercial kitchen are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

### Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded with particular regard to whether the proposal amounts to a material change of use from a dwellinghouse to a mixed use comprising a dwellinghouse and a commercial kitchen.

### Reasons

4. The existing appeal site comprises a semi-detached dwellinghouse falling within a single planning unit. The LDC application form states *'I require the lawful development certificate to use my kitchen for pre orders which I will receive from customers...Slots for collections will be limited which will cause minimal congestion, I will be able to offer off street parking for customers if required. The odour of cooking should not affect anyone close by due to the distance and enclosed boundaries of my property. We will only be open by appointments and there will not be any walk ins for customers everything will be pre booked'*.
5. The appellant has made supplementary comments to the above as part of the appeal. He comments that the commercial kitchen would not be open to visiting members of the public for food consumption purposes. He says, *'if congestion was*

*an issue, I can completely stop collections of food and offer just a delivery service'. He says that there would be 'no advertising boards or banners' and 'I have a ventilation system in place due to it being a small-scale cooking'.*

6. It has been held in case law that a change of use can only be material by bringing about a definable change in the character of the main use of the land. In other words, it is necessary to examine whether the proposal would lead to some significant difference in the character of the activity from what has gone on previously as a matter of fact and degree. In order to determine whether the proposal would amount to a material change of use of the dwellinghouse to a mixed dwellinghouse and commercial kitchen use, it is necessary for me to determine whether such a proposal would bring about a definable change in the character of the existing primary use of the land as a dwellinghouse.
7. I also emphasise that depending on the information submitted as part of the LDC application, it would be necessary to also consider section 55(2)(d) of the Act which states that *'the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such'* does not constitute an act of development. The need or otherwise for planning permission is concerned with acts of development.
8. As part of the decision-making process, it is necessary that the LDC application includes enough detail and precision in respect of how the proposal would specifically operate. Indeed, the Government's Planning Practice Guidance states *'an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate'*.
9. In this case, the appellant has indicated that food would be prepared on the premises using the existing domestic kitchen and that a collection and delivery service would be offered. He states that he would run the business and that no full-time members of staff would be employed. He has indicated, as part of the appeal, that he would not offer a collection service if that were a necessary requirement in terms of issuing an LDC. It is not appropriate to evolve an LDC application as part of an appeal and, moreover, it is necessary that I determine the appeal based on what has specifically been applied for at LDC application stage.
10. Notwithstanding the above, I find, in any event, that the appellant's LDC application lacks sufficiently precise information to enable me to reach a properly informed judgement. Furthermore, and, if an LDC were to be approved, such precise details would be necessary in so far as forming the baseline position and including the possible inclusion of specific details in the description of proposed development.
11. 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 be undertaken each day/week; the maximum number of appointments that could be made 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 proposed hours of use for deliveries and collections; 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.

12. 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 in the character of the existing main use of the land as a dwellinghouse.
13. The information accompanying the LDC application is too vague. I acknowledge the appellant's concern that the local planning authority (LPA) could have asked for more information as part of the determination of the LDC application. I pass no comment on this, other than to say that it is a matter that would need to be taken up separately with the LPA. I also note the appellant's reference to an LDC application being approved for what is said to be similar development at 110 Brown Royd Avenue. I do not have full details before me in respect of this LDC and, in any event, it is necessary that I determine this LDC appeal on the information that accompanies the LDC application, and not on the information that accompanied a different LDC application.

### **Conclusion**

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of the premises as a commercial kitchen is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

*D Hartley*

INSPECTOR