

**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/91310/E

Site: 35, Bank View, Birkenshaw, BD11 2AG

Description: Certificate of Lawfulness to convert garage to
habitable room

Case Officer: Laura Yeadon

Decision Reference: PROPOSED OPERATIONS/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 08-Jul-2025

Officer Report

[Weblink](#)

Site Description

35 Bank View is a modest sized detached dwelling located within an area without notation on the Kirklees Local Plan. the property is accessed directly off Bank View and hosts a forward projecting attached double garage and a conservatory to the rear. There is a driveway providing access into the garage and the main amenity space is to the rear of the property.

Description of Proposal

Permission is sought for a Certificate of Lawfulness to convert the garage to habitable living accommodation.

The submitted details do not indicate that there would be any extensions to the property with the application form detailing that works would incorporate the external infill of the garage doors with walling materials to match the existing with windows, also to match the existing.

The property has not had its Permitted Development Rights removed.

History of negotiations/amendments received

The Agent was contacted by the Case Officer to determine the proposed use of the accommodation, once converted. The Agent has confirmed that the use of the garage, once converted would be '*annex accommodation for family members as ancillary use to the main dwelling, it won't be a separate dwelling, nor will it be rented out (Airbnb etc).*'

Relevant Planning History

2000/92384 Outline application for residential development – Conditional Outline Permission

2001/90958 Erection of 24 no. dwellings with garages – Withdrawn

2002/90433 Residential development – Section 106 Full Permission

2002/94470 Erection of residential development comprising apartments, town houses, detached dwellings and garages (62 no.) – withdrawn

2003/94802 Erection of 5 no. detached dwellings with garages – Conditional Full Permission

Consultation Responses

None required

Issues and Assessment

The main considerations in the determination of this application are:

1. Whether the proposed development would constitute development as defined within section 55 of the Town and Country Planning Act 1990; If so, whether permitted development rights apply to the property; and
1. Whether the proposed development falls within permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1 (Development within the curtilage of a dwellinghouse), Class A (enlargement, improvement or alteration of a dwellinghouse).

The fundamental aim of a general planning permission under, Class A Part 1 of Schedule 2 is to provide a general planning permission for alterations, improvements and enlargements to an existing dwellinghouse subject to several limitation assessed below. This assessment is concerned with the alterations to the existing integral garage to remove the existing garage doors and replace with matching walling and window openings. Class A does not provide any scope to grant a planning permission for any change of use of the existing garage. However, the change to the use of the garage is subject to an assessment of whether a material change of use occurs leading to development as defined by section 55 of the Town and Country Planning Act 1990.

In this case the Agent has confirmed that the use of the garage, once converted would be annex accommodation for family members as ancillary use to the main dwelling and would not be a separate dwelling, nor will it be rented out (Airbnb etc).

Ancillary annex accommodation could typically consist of simple facilities to extend the existing primary living areas allowing living space away from the main parts of the dwellinghouse to wider provisions, such as sleeping, cooking, cleaning and living areas capable to support the day-to-day existence of the occupier. While the latter could result in the provision of independent living, the Courts¹ have held that the creation of independent living accommodation does not always result in a material change of use if it can be demonstrated the additional living accommodation does not result in the creation of a separate planning unit.

In assessing the planning unit, the Court² held that a planning unit consists of the unit of occupation unless a physically and functionally separate planning unit can be identified. In this case, the existing unit of occupation is the principal dwellinghouse including the integral garage and surrounding garden and driveway. The conversion of the existing garage does not consist of any works to fence off or physically separate the garage and neither is it proposed to

¹ Uttlesford District Council v. Secretary of State for the Environment [1992] J.P.L. 171.

² Burdle v Secretary of State for the Environment [1972] 3 All E.R. 240, 244

create a separate dwellinghouse or short-term holiday let. The existing driveway in front of the garage is space likely to continue to be used for the parking of household vehicles and the existing garden areas are also likely to be shared by the residents in the house and garage. The garage accommodation to be used by family members would also not introduce functionally separate use given the family members are also likely to share accommodation in the house and garage.

Consequently, it cannot be concluded that a separate planning unit would be created by the conversion of the existing garage into ancillary living accommodation for family members and therefore the change in the use does not consist of development.

It is noted however, that the dwellinghouse built pursuant to planning permission reference 2003/948702 was granted subject to conditions stating:-

(6) The garage or parking space intended to serve the dwelling(s) shall be provided and the parking spaces shall be drained, sealed and surfaced in accordance with details to be approved by the Local Planning Authority before the dwelling(s) is/are occupied and shall not thereafter be used for any purpose other than parking and turning of vehicles.

(8) The garages shall be used for the garaging of private motor vehicles or for uses ancillary to the enjoyment of the dwellinghouse as such and for no other purposes.

Condition 6 requires either the garage or parking space to be provided and retained thereafter. Condition 8 requires the garage to be used either for the garaging of vehicles or uses ancillary to the dwellinghouse.

In this case, the existing driveway provided the parking spaces for the dwellinghouse and these are intended to be retained. The change of use for living accommodation is also considered to be ancillary to the enjoyment of the dwellinghouse.

Garage conversion and alteration of garage doors to windows

Development not permitted

A.1 Development is not permitted by Class A if—

- a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

Comment: *The dwellinghouse has not been granted by any of the above.*

- a) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

Comment: *There is no proposed increase in the original footprint of the dwellinghouse.*

- b) The height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

Comment: *No enlargement to the dwellinghouse is proposed.*

- c) The height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse

Comment:

- d) The enlarged part of the dwellinghouse would extend beyond a wall which –
 - (i) forms the principal elevation of the original dwellinghouse; or
 - (i) fronts a highway and forms a side elevation of the original dwellinghouse;

Comment: *No enlargement to the dwellinghouse is proposed.*

- e) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and-
 - (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwelling, or 3 metres in the case of any other dwellinghouse.
 - (i) Exceed 4 metres in height;

Comment: *No enlargement to the dwellinghouse is proposed.*

- f) For a dwelling not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single story and –
 - (i) Extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or
 - (i) Exceed 4 metres in height

Comment: *No enlargement to the dwellinghouse is proposed.*

- g) The enlarged part of the dwellinghouse would have more than a single storey and-
 - (i) Extend beyond the rear wall of the dwellinghouse by more than 3 metres, or
 - (ii) Be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse

Comment: *No enlargement to the dwellinghouse is proposed.*

- h) The enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;

Comment: *No enlargement to the dwellinghouse is proposed.*

- i) The enlarged part of the dwellinghouse would extend beyond wall forming a side elevation of the original dwellinghouse, and would-
 - (i) Exceed 4 metres in height
 - (i) Have more than a single storey, or
 - (ii) Have a width greater than half the width of the original dwellinghouse

Comment: *No enlargement to the dwellinghouse is proposed.*

ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j)

Comment: *No enlargement to the dwellinghouse is proposed.*

- j) It would consist of or include –
 - (i) The construction or provision of a verandah, balcony or raised platform
 - (ii) The installation, alteration or replacement of a microwave antenna,
 - (iii) The installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
 - (iv) An alteration to any part of the roof of the dwellinghouse

Comment: *None of the above are proposed.*

- k) The dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)

Comment: *The dwellinghouse was not granted permission under Part 20*

A.1 Development is not permitted by Class A if –

Conditions

A.2 In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if:

- a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;
- a) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or
- b) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse.

Comment: *The property is not on article 2(3) land.*

A.3 Development is permitted by Class A subject to the following conditions—

- a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;
- a) any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be—
 - (i) obscure-glazed, and
 - (i) non- opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and
 - (ii) where the enlarged part of the dwellinghouse has more than a single storey, the roof pitch of the enlarged part must, as far as practicable, be the same as the roof pitch of the original dwellinghouse.

Comment: *The walling up or the garage doors would be completed with materials to match the host dwelling.*

Conclusion:

The proposal has been considered against the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) and is recommended for approval.

The proposed alterations to the existing garage to create ancillary living accommodation for family members benefit from a general planning permission granted under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) subject to conditions as stated in paragraph A.3 of the same Order.

Note: Should the use of the conversion as a separate 'planning unit' (self contained annex accommodation or as a separate dwelling) be implemented, the works would require an application for full planning permission.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan	2025-081 – SLP		13 th May 2025
Existing elevations, roof plan and section	2025-081 – 100		13 th May 2025
Email from agent	-	-	04 June 2025

Dated: 4th June 2025