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/91412/E
Site:	land at, Victoria Street, Clayton West, Huddersfield, HD8 9NW
Description:	Certificate of lawfulness for proposed garage
Case Officer**:**	Laura Yeadon
Decision Reference:	**PROPOSED OPERATIONS 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 15-Jul-2025

Officer Report

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1. Site Description

1.1 47 Victoria Street is a two storey, end terraced dwelling located within an area without notation on the Kirklees Local Plan. The property is constructed from stone and has amenity space to the front and rear.

1.2 There is also a parcel of land opposite the property which faces the site on the south-western side of Victoria Street which is comprised of a driveway and large, detached garage.

2. Description of Proposal

2.1 Permission is sought for a Certificate of Lawfulness for the erection of a garage. The information within the application form states that it is proposed to remove the existing garage and replace it.

2.2 The application form states that the exiting garage is 7.84m long, 4.81m wide, 2.4m height to eaves and 3.66m high to the roof ridge.

2.3 The replacement garage would be 8.225m long, 5m wide, 2.4m to eaves height with an overall height of 3.26m to the roof ridge.

2.4 It is proposed that the building would be steel framed with PVC cladding with a new concrete base reinforced with steel mesh and a damp proof membrane.

3. The Relevant Test

3.1 Section 192(1) (a) 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 are lawful to make an application to the Local Planning Authority.

3.2 Section 191(2) of the Act provides that uses are lawful if at any time if no enforcement action may be taken in respect of them and they do not constitute a contravention of any the requirements of any enforcement notice then in force.

4. The Relevant Test

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

4.2 The Applicant's evidence does not need to be corroborated by "independent" evidence. If the Local Planning Authority have 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.

5. Limitations

5.1 A Certificate of Lawfulness must contain 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.

6. Relevant Planning History

6.1 1999/93101 – Erection of detached garage – Conditional Full Permission

7. Evidence submitted in the support of the application

7.1 The following evidence has been supplied:

- Application form
- Location plan

8. Evidence submitted against the application

8.1 None

9. Assessment

9.1 The applicant has submitted the application to obtain a Certificate of Lawfulness for the erection of a garage to replace the existing garage within the land opposite the front elevation of the property.

9.2 The application form clearly sets out that the garage is to be used for the parking and storage in association with No. 47 which faces the site, on the opposite side of Victoria Street.

9.3 It is also noted that the application form states that the use class for the building is as B8 – Storage or distribution.

9.4 For clarity, the use of the building as a B8 use would be within a commercial use and therefore would not benefit from a Certificate of

Lawfulness as there are no provisions to construct this form of development within the Town and Country Planning Act 1990 without the requirement of planning permission.

9.5 That being said, the application form indicates that the use of the building would be for parking and storage for No. 47 Victoria Street. Therefore, for the purposes of a Certificate of Lawfulness, the application would be more akin to a domestic garage which may fall within 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 E (building etc incidental to the enjoyment of a dwellinghouse).

9.6 Therefore, to obtain a Certificate of Lawfulness under the above regulations the main point to establish is whether the development would be within the curtilage of a dwellinghouse

9.7 Curtilage

9.8 The Oxford English dictionary definition of curtilage is 'The area of land around a house and its surrounding yard and outbuildings used for domestic purposes, as fenced (i.e. enclosed) or marked out to have the effect of enclosure'.

9.9 There is case law surrounding the definition of curtilage which is considered to be relevant in this case. In the case of McAlpine v Secretary of State for the Environment [1995] the judgement that was arrived at in the Dyer case was maintained and further concluding that curtilage is constrained to a small area around a building The Court of Appeal in Secretary of State for the Environment, Transport and the Environment, Transport and the Regions v Skerritts of Nottingham [2000] set out the definition of a curtilage in relation to a building must remain a question of face and degree in each case. However, the McAlpine case provided an number of characteristics which could define whether or not land is curtilage. These are whether the land is confined to a small area about a building, has an intimate association with then dwellinghouse and is undoubtably within the curtilage and needs to be regarded in law as part of one enclosure with the house. To aid considerations the Court have held relevant factors such as physical layout, ownership and use past and present.

9.10 In this case the physical layout of the land where the proposed garage is to be sited is separated from the dwellinghouse by an adopted road (Victoria Street). The subject land has its own boundaries to that of the dwellinghouse when considering land ownership records and while it appears to have functioned as land

associated with the dwellinghouse, it is detached and appears an annexed area of land rather than land which would traditionally surround a dwellinghouse acting as garden.

9.11 In light of the separation of the land, it cannot be regarded as forming one enclosure with the dwellinghouse or that it enjoyed an intimate association with the dwellinghouse such as a garden despite it's apparent domestic use.

9.12 Therefore, the works to provide a garage for parking and storage in connection with the property known as 47 Victoria Street would fail to meet the criteria of the Town and Country Planning Act 1990 and 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 E (building etc incidental to the enjoyment of a dwellinghouse) and would require an application for Full Planning Permission.

9.13 In the event this is demonstrated otherwise the development would clearly be forward of the principal elevation of the dwellinghouse and thus cannot benefit from Class E development in any event.

10. Other matters

10.1 Demolition

10.2 The existing building within the parcel of land is proposed to be replaced and therefore The Town and Country Planning (Demolition – Description of Buildings) Direction 2021 is of relevance.

10.3 The above Demolition Direction states that demolition shall not be taken to in land that contains any building the cubic content of which, measured externally, does not exceed 50 cubic metres. The demolition of the existing garage would therefore be regarded as development requiring planning permission. Part 11, Class B of the General Permitted Development provides a general planning permission for certain types of demolition although this is either in the event of re-development or with the grant of prior approval. In the absence of any planning permission for the replacement garage the demolition cannot be regarded as re-development and without prior approval, it cannot be considered permitted development.

11. Other representations or comments by third parties

11.1 None

12. Conclusion

12.1 The works to demolish the existing garage and provide a garage for parking and storage in connection with the property known as 47 Victoria Street would fail to meet the criteria of the Town and Country Planning Act 1990 and 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 E (building etc incidental to the enjoyment of a dwellinghouse) or Part 11 Class B as the application fails to demonstrate that the proposed garage would be located within the defined curtilage of the dwellinghouse.

Decision Authorisation – Delegated Powers

Application Number: 2025/91412

Officer Recommendation: Refuse

The works to demolish the existing building and construct a garage for parking and storage in connection with the property known as 47 Victoria Street would fail to meet the criteria of the Town and Country Planning Act 1990 and 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 E (building etc incidental to the enjoyment of a dwellinghouse) and Part 11, Class B (Demolition of Buildings). The application fails to demonstrate that the proposed garage would be located within the defined curtilage of the dwellinghouse or that the demolition of the existing garage constitutes lawful re-development or benefits from any prior approval under Class B of Part 11.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form	PP-14035776		22nd May 2025
Location plan	PP-14035776v1		22nd May 2025

Dated: 12th June 2025