

**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:	<b>2023/62/91577/E</b>
Site Address:	14, Thornhill Park Avenue, Thornhill, Dewsbury, WF12 0DA
Description:	Erection of detached dwelling
Recommending Officer:	Nina Sayers

**DECISION - REFUSE**

**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.**

Sarah Longbottom

***AUTHORISED OFFICER***

**Date:** 26 March 2024

## LOCATION PLAN



**Map not to scale – for identification purposes only**

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**Electoral wards affected: Dewsbury South**

**Ward Councillors consulted: No**

**Public or private: Public**

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### **RECOMMENDATION: REFUSE**

1. The proposed dwelling, by virtue of scale, massing and design, would fail to integrate sympathetically into the street scene and would not be in keeping with the character of the area. The scheme would therefore fail to comply with Policy LP24(a) of the Kirklees Local Plan, Principle 2 of the Housebuilders Design Guide SPD and the aims of chapter 12 of the National Planning Policy Framework.

2. The proposed development, by virtue of scale, massing and proximity to nos.12 and 14a Thornhill Park Avenue, would have an oppressive, overshadowing and overbearing impact on the amenity of neighbouring occupiers. The scheme would therefore fail to comply with Policy LP24(b) of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and the aims of chapter 12 of the National Planning Policy Framework.

### **1. INTRODUCTION:**

1.0 This application was requested to be brought to the District Wide Planning Committee at the request of Cllr Nosheen Dad, ward councillor for Dewsbury South, for the following reason:

*“After taking a site visit yesterday and speaking in depth to the applicant regarding the history of the property, I disagree with officers recommendation for refusal based on residential amenity.*

*The width of number 14 has not changed from the original dwelling and the further back the property extends in length the distance between 14 and 14a increases which in my opinion has a far less overshadowing and oppressive impact on 14a. There are also no windows on the first floor of number 14, therefore will have no concerns regarding privacy.*

*I understand Mr Azam has also taken the dwelling back by 1.5meters which again has a far less overshadowing and overbearing impact on 14a. Based on this I’d like to refer the this application to our planning committee.”*

- 1.1 The Chair of the District Wide Planning Committee has confirmed that Cllr Nosheen Dad’s reasons for the referral to the Committee have been fully considered by officers and addressed in the officer’s report. As the application is retrospective it was also decided that the impact on visual and residential amenity can already be seen. Following discussion with the Chair of the District Wide Committee at the Chairs Briefing held on 07 March 2024, the Chair has delegated the application back to officers for determination. This is in accordance with the Council’s Scheme of Delegation set out in the Constitution.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is set within a residential cul-de-sac in Thornhill, Dewsbury which is primarily characterised by bungalows and moderate two-storey dwellings. This application is partially retrospective and the majority of the superstructure of the proposed dwelling has already been erected. Prior to the erection of the unauthorised dwelling, the site served a moderate two-storey detached dwelling. The submitted site location plan indicates that the adjacent no.12 is within the same ownership.
- 2.2 Officers noted that when visiting the site, it was apparent that a large outbuilding was being constructed to the rear of the property which does not have planning permission, in addition to a raised platform which is also without the benefit of planning permission.
- 2.3 The site is unallocated within the Kirklees Local Plan. It is not within a conservation area and there are no listed buildings in the vicinity.

## **3.0 PROPOSAL:**

- 3.1 The application is seeking permission for erection of a replacement detached dwelling.
- 3.2 The proposal is for a detached two-storey dwelling with a pitched roof design and a single storey, flat roofed element to the rear. The dwelling

would be 9.3m wide with a total depth of 16.3m. The roof ridge height would measure 8.3m.

3.3 The structure has been finished in Bradstone (cast stone) under clay tile roofing.

3.4 There would be parking provided for three vehicles to the front of the proposed dwelling.

#### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 2022/91990 Erection of extensions and alterations. Conditional full permission.

2022/91498 Prior approval for erection of single storey rear extension. Not required.

2021/93773 Erection of extensions and alterations. Conditional full permission.

2011/91820 Erection of single storey extensions and alterations. Refused.

2011/90624 Erection of extensions and alterations. Refused.

2002/93987 Erection of two storey and single storey extensions. Conditional full permission.

2000/91380 Erection of two storey extension. Conditional full permission.

97/92763 Erection of detached garage and utility room. Conditional full permission.

88/02016 Erection of 51 dwellings with integral garages. Granted conditionally.

87/04643 Erection of 7 no. dwellings with associated roads and sewers. Refused.

#### **4.2 At 12 Thornhill Park Avenue:**

2021/93122 Erection of extensions and alterations. Conditional full permission.

2020/94011 Prior approval for a single storey rear extension. Not required.

#### **5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):**

5.1 The submitted plans raised significant concerns in terms of visual and residential amenity. Although the 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. This application is retrospective and there are no small revisions which could make the proposal acceptable and therefore officers did not enter into negotiations with the applicant/agent.

## **6.0 PLANNING POLICY:**

- 6.1 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 27<sup>th</sup> February 2019).

### Kirklees Local Plan (2019):

- 6.2 **LP1** – Achieving sustainable development  
**LP2** – Place shaping  
**LP3** – Location of new development  
**LP21** – Highways and access  
**LP22** – Parking  
**LP24** – Design  
**LP30** – Biodiversity and Geodiversity  
**LP51** – Protection and improvement of local air quality  
**LP52** – Protection and improvement of environmental quality  
**LP53** – Contaminated and unstable land

### Supplementary Planning Guidance / Documents:

#### 6.3

- Highways Design Guide SPD
- Housebuilders Design Guide SPD
- Biodiversity Net Gain Technical Advice Note

### National Planning Guidance:

- 6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20<sup>th</sup> December 2023, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

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

- Chapter 2 – Achieving sustainable development

- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making efficient use of land
- Chapter 12 – Achieving well-designed and beautiful places

## **7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 The application was advertised by neighbour notification letters. Final publicity expired on 16<sup>th</sup> October 2023.
- 7.2 No representation was received as a result of site publicity.

## **8.0 CONSULTATION RESPONSES:**

### **Statutory:**

The Coal Authority - No objections subject to condition.

Canal and River Trust – No objection.

### **Non-Statutory:**

KC Highways Development Management – No objection.

KC Environmental Health – No objections subject to condition.

## **9.0 MAIN ISSUES**

- Principle of development
- Impact on visual amenity
- Impact on residential amenity
- Impact on highway safety
- Other matters
- Representations
- Conclusion

## **10.0 APPRAISAL**

### Principle of development

- 10.1 NPPF paragraph 12 and LP1 outlines a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation. The dimensions of sustainable development will be

considered throughout this proposal. The site is without notation on the KLP Policies Map. Policy LP2 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'.

- 10.2 Chapter 11 of the NPPF requires that planning decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improvement the environment and ensure safe and healthy living conditions.
- 10.3 Paragraph 11 also advises that plans and decisions should apply a presumption in favour of sustainable development. It adds, within the same paragraph, that where the policies in the Development Plan, deemed most relevant to the consideration of the proposal in question are out-of-date, the default position is that planning permission should be granted unless:-
  - a) policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or
  - b) any adverse impacts of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
- 10.4 In the case of applications for residential development such as this, the NPPF adds that policies will normally be considered 'out of date' if the Local Planning Authority cannot demonstrate a five year supply of deliverable housing land.
- 10.5 The Local Plan identifies a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum. National planning policy requires local planning authorities to demonstrate five years supply of deliverable housing sites against their housing requirement.
- 10.6 The 2023 up-date of the five-year housing land supply position for Kirklees shows 3.96 years supply of housing land. As the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, it is necessary to consider planning applications for housing development in the context of NPPF paragraph 11 which triggers a presumption in favour of sustainable development. This means that for decision making "Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (NPPF Footnote 8), granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (NPPF Footnote 7) ; or

- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”
- 10.7 The Council’s inability to demonstrate a five-year supply of housing land weighs in favour of housing development but has to be balanced against any adverse impacts of granting the proposal. The judgement in this case is set out in the officer’s assessment.
- 10.8 Policy generally seeks to support residential development upon unallocated sites. Officers note that this application is for a replacement dwelling, and the site previously contained a residential dwelling and therefore the principle of residential development on this site is considered acceptable.
- 10.9 Taking the above into consideration, in the broadest form, the development of this site is considered acceptable in accordance with Local Plan Policies LP1 and LP2. However, the development must now be assessed against all material considerations.

Impact on visual amenity

- 10.10 The NPPF offers guidance relating to design in Chapter 12 (achieving well designed places) whereby 131 provides a principal consideration concerning design which states:

*“The creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”.*

- 10.11 Kirklees Local Plan policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity.

- 10.12 LP24 states that proposals should promote good design by ensuring:

*“a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape...”*

- 10.13 Paragraph 134 of the NPPF sets out that design guides and codes carry weight in decision making. Of note, Paragraph 139 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Relevant to this is the Kirklees Housebuilders Design Guide SPD 2021,

which aims to ensure future housing development is of high-quality design.

10.14 Principle 2 of the Kirklees Housebuilders Design Guide SPD states that:

*“New residential development proposals will be expected to respect and enhance the local character of the area by:*

- *Taking cues from the character of the built and natural environment within the locality.*
- *Creating a positive and coherent identity, complementing the surrounding built form in terms of its height, shape, form and architectural details.*
- *Illustrating how landscape opportunities have been used and promote a responsive, appropriate approach to the local context.”*

10.15 Principle 15 states that the design of the roofline should relate well to site context. Further to this, Principle 13 states that applicants should consider the use of locally prevalent materials and finishing of buildings to reflect the character of the area, whilst Principle 14 notes that the design of openings is expected to relate well to the street frontage and neighbouring properties.

10.16 This application is for a large, detached, pitched roofed structure. The context of the surrounding area is predominantly bungalows with some moderate two-storey dwellings, similar to the original dwelling on this site. The site is located towards the end of the cul-de-sac and is oriented west. The adjacent dwelling to the south is a bungalow and is set back significantly from the front elevation of the host dwelling. Therefore, the dwelling is in a prominent position within the cul-de-sac and due to the topography, can be viewed along the entirety of the highway up to the junction with Staincliffe Road.

10.17 The scale and massing of the proposed structure would be significantly larger than the other dwellings in the estate and would not be in keeping with the local character of the area, thus failing to comply with Policy LP24(a) of the KLP and Principle 2 of the Housebuilders Design Guide SPD.

10.18 The original dwelling had permission granted for extensions and alterations, both single and two-storey under applications 2021/93773, 2022/91498 and 2022/91990. As the original dwelling, which these applications related to, has now been demolished, these applications could no longer be implemented. That being said, these applications were determined relatively recently and in this instance some weighting will be given to the previous permissions.

10.19 The proposed dwelling is significantly larger than the dwelling it replaced. The previous dwelling had a significantly smaller footprint

and a staggered roof which significantly reduced the prominence of the dwelling in the wider context of the site. Similarly, the proposed extended dwelling, as approved under application 2022/91990 (which is the largest of the three previous approvals), would have still been significantly smaller in both footprint and volume than the dwelling proposed under this application. The approved scheme would also have a staggered roof form which would have reduced the bulk of the dwelling.

- 10.20 The proposed dwelling would be entirely covered in hardstanding to the front and rear. It is noted there is a grassed raised platforms erected to the rear of the dwelling; however, this has not been included as part of the current application and requires planning permission as this would be considered an engineering operation. The applicant has been advised that they should seek permission for this development under a separate application. In the interest of visual amenity, officers would want to see more soft landscaping within the application site. Given the proposed dwelling is considered unacceptable in terms of visual amenity in any case, amended plans were not sought in this instance.
- 10.21 Having taken the above into account, the proposed development is considered to not be in keeping with the local character of the area and would therefore cause significant harm to visual amenity, failing to comply with Policy LP24 of the Kirklees Local Plan (a) in terms of the form, scale and layout, Principle 2 of the Housebuilders Design Guide SPD and the aims of chapter 12 of the National Planning Policy Framework.

#### Residential Amenity

- 10.22 Section B and C of LP24 states that alterations to existing buildings should:

*“...maintain appropriate distances between buildings’ and ‘...minimise impact on residential amenity of future and neighbouring occupiers.”*

- 10.23 Further to this, Paragraph 135 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

- 10.24 Principle 6 of the Kirklees Housebuilders Design Guide SPD states that:

*“Residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking.”*

- 10.25 The SPD also provides advised separation distances for two storey dwellings:

- *21 metres between facing windows of habitable rooms at the backs of dwellings;*
- *12 metres between windows of habitable rooms that face onto windows of a non-habitable room;*
- *10.5 metres between a habitable room window and the boundary of adjacent undeveloped land; and*
- *for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary.*

10.26 The proposed dwelling would most likely impact upon the amenity of nos. 12 and 14a Thornhill Park Avenue. It is noted that no.12 is within the ownership of the applicant, as outlined on the submitted Site Location Plan, however the amenity of any occupiers, or future occupiers must still be assessed.

10.27 No.12 Thornhill Park Avenue is located due south of the application site. It is a bungalow with a large single storey rear extension erected. No.12 is set significantly further back than the front elevation of the host dwelling. There is an opening in the northerly side elevation which serves a bedroom. The two-storey section of the dwelling at no.14 is set ~2.5m from this opening, which would block the light and outlook of any future occupant of no.12.

10.28 No.14a is located north-west of the application site and is a two-storey detached dwelling. Due to the layout of no.14a, there are a number of openings in the south-eastern elevation, some of which serve habitable rooms. The primary amenity space for the dwelling is also located to the south-west of the dwelling, adjacent to the boundary with no.14.

10.29 The proposed dwelling would result in a 12m deep two-storey building with an additional 4m single storey element, which stretches along the full extent of the boundary with no.14a. This would have an oppressive, overbearing and overshadowing impact on the amenity of the occupiers of that dwelling, with specific reference to the openings in the side elevation of no.14a and the primary amenity space. This is further exacerbated by the structure which was being constructed to the east of the dwelling which would be built directly along the only remaining, undeveloped boundary of no.14a. This structure is not being assessed under this application, but it is noted this has been erected without planning permission. The applicant has been advised that they should seek permission for this development under a separate application.

10.30 Principle 16 of the Housebuilders Design Guide SPD states that:

*“All new build dwellings should have sufficient internal floor space to meet basic lifestyle needs and provide high standards of amenity for future occupiers. Although the government has set out Nationally*

*Described Space Standards, these are not currently adopted in the Kirklees Local Plan.”*

Further to this, Principle 17 of the Kirklees Housebuilders Design Guide SPD outlines that:

*“All new houses should have adequate access to private outdoor space that is functional and proportionate to the size of the dwelling and the character and context of the site. The provision of outdoor space should be considered in the context of the site layout and seek to maximise direct sunlight received in outdoor spaces.”*

- 10.31 The proposed dwelling exceeds the minimum recommendations as set out within the NDSS for a 3-bedroom, 6 person dwelling. The proposed development is considered to have sufficient space around the dwelling which could be utilised as amenity space.
- 10.32 Taking the above into consideration. It is considered that the proposed dwelling, by virtue of its scale, massing and proximity to the neighbouring properties, would result in significant harm to the amenity of future occupiers of nos.12 and 14a Thornhill Park Avenue. The proposal would therefore fail to comply with LP24(b) of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and the aims of Chapter 12 of the NPPF.

#### Highway issues

- 10.33 Local Plan Policy LP21 states that ‘*All proposals shall:*
- a. ensure the safe and efficient flow of traffic within the development and on the surrounding highway network...*
  - e. Take into account the features of surrounding roads and footpaths and provide adequate layout and visibility to allow the development to be accessed safely;’*
- 10.34 This is supported by Chapters 9 and 12 of the NPPF and guidance within the Highways Design Guide SPDs. KC Highways Development Management (KC HDM) have also been consulted as part of this application and had no objections to the scheme.
- 10.35 Three off-street parking spaces would be provided to the front of the property which would be sufficient for a three-bedroom dwelling. The proposed dwelling utilises the same access and similar parking arrangement to the previous dwelling.
- 10.36 It is therefore considered that the proposal would not cause detrimental harm to the safe and efficient operation of the highway network, in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the NPPF.

#### Representations

10.37 No representation received as a result of site publicity.

### Other Matters

#### *Carbon Budget*

- 10.38 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.
- 10.39 Due to the nature of the scheme, this being a proposal providing one new residential unit within the site, it is considered that one electric vehicle charging point for this dwelling should be provided to aid in the contribution to climate change. This matter could be addressed by condition should planning permission be granted. This will ensure the proposal accords with LP51 and LP52 of the KLP.

#### *Land Contamination*

- 10.40 KC Environmental Health (KC EH) have been consulted on this proposal. A Coal Mining Risk Assessment (CMRA) has been submitted alongside the application for this application. The site is in a Development High-Risk Area with probable shallow coal mine workings. Past underground workings are known, and a coal seam is believed to exist beneath the site at a very shallow depth. The report advises that the site has remained undeveloped until the 1980s when a dwelling was constructed, and a garage in the 1990s. The report concludes by recommending the drilling of boreholes in the proposed development area.
- 10.41 KC EH have read the report provided. Council records also indicate the site is close to potentially contaminated land which may impact the site. Consequently, KC EH recommend full land contamination conditions and footnote be applied to any granted consent. In the first instance, we require a comprehensive preliminary risk assessment to be conducted, addressing all potential pollutant pathways impacting the site. This assessment should encompass both on-site and off-site aspects of the coal mining legacy, as well as any other potential sources of pollution.
- 10.42 The application site is within a High Risk Coal Mining Area and therefore the Coal Authority were consulted on the proposal. The Coal Authority's Planning & Development Team concurs with the

recommendations of the submitted Coal Mining Risk Assessment report; that coal mining legacy potentially poses a risk to the proposed development and that investigations are required, along with possible remedial measures, in order to ensure the safety and stability of the proposed development, they recommended conditions. The recommended conditions are pre-commencement and given this application is retrospective, this would not be reasonable. However, should approval be recommended these conditions would be added with appropriate re-wording. The proposed scheme therefore could comply with Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

#### *Ecology*

- 10.43 This application is the demolition and replacement of an existing dwelling. Therefore, the site offers limited ecological potential, and the proposal is considered to not cause any additional harm to ecology, over and above the existing. Although additional soft landscaping would be preferred. The proposed site plan shows some additional green space and trees to be proposed in the south-eastern and north-western corners of the site. Should approval be recommended, it would be conditioned that a bird box is included on any future development. Therefore, the proposal complies with LP30 of the Kirklees Local Plan.

#### *Canal and Rivers*

- 10.44 The application site is located ~90m from the Calder Hebble Navigation. The Canal and River Trust were consulted on the proposed application but have no comments to make on the proposal. The scheme is therefore considered acceptable in relation to the nearby canal.

#### *Gas Network*

- 10.45 The application site is located within the outer zone of the gas measure. Therefore, a consultation was sought from Northern Gas Network. They raised no objection to the proposal but did provide some guidance for the applicant which is available on the website. It is advised the applicant reviews these prior to proceeding with any development.

## **11.0 CONCLUSION**

- 11.1 This application for the erection of a replacement dwelling at 14 Thornhill Park Avenue in Thornhill has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations.
- 11.2 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when

assessed against policies in the NPPF and other material considerations.

## **12.0 Reasons for refusal**

1. The proposed dwelling, by virtue of scale, massing and design, would fail to integrate sympathetically into the street scene and would not be in keeping with the character of the area. The scheme would therefore fail to comply with Policy LP24(a) of the Kirklees Local Plan, Principle 2 of the Housebuilders Design Guide SPD and the aims of chapter 12 of the National Planning Policy Framework.
2. The proposed development, by virtue of scale, massing and proximity to nos.12 and 14a Thornhill Park Avenue, would have an oppressive, overshadowing and overbearing impact on the amenity of neighbouring occupiers. The scheme would therefore fail to comply with Policy LP24(b) of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and the aims of chapter 12 of the National Planning Policy Framework.

### **Background Papers:**

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2023%2f91577>

Certificate of Ownership – Certificate A signed.