

You have asked me to summarise my objections and comments re. above. The points made below also reflect the most recent updates and my current understanding of matters that I believe are being considered as part of determination on planning application. Noted that due to timing of response from Kirklees on some matters, I have sent further emails asking for clarification and adding the detail and clarity to original objections. I am happy to consolidate my comments and objections, without prejudice to previous submissions, however I assume that all previous comments are being addressed. Due to the many different matters that this application impacts on, creating a concise summary is not an easy matter. I have tried to cover all key areas and, in some cases, copy pasted text from previous submissions and I apologise where there is duplication and for grammatical errors. This is not a particularly concise document due to the complexities involved and need to cover some points in detail due to the lack of response I have had to most of the questions raised to Kirklees officers over the course of the last 3mths. It does capture my main points raised and comments in one document.

I understand the planning team have access to my full unredacted copies of objections which I assume will be also drawn upon. I ask that along with this summary you to review my comments and further emails sent to you:

01/07/2020 – concerns about mature trees
05/07/2020 – ref. information received under Freedom of information
08/07/2020 - objection to road proposal
17/07/2020 – ref. grounds for decision making re. Road adoption
02/08/2020 – ref. copy of email re. highway related questions
28/06/2020 - developers proposed road adoption
05/06/2020 – preplanning information
07/05/2020 – Comments Final

Whilst I have tried to capture the key questions I have asked of officers within Kirklees, for completeness I have included selected emails to your colleagues in highways, Land and Legal, in the Appendix. I note that I have little response to any questions.

This document covers:

1. General position
2. Matters relating to Road adoption
3. Matters relating to Common Land
4. Consensus views – Local support
5. Conflicting statements Preplanning to Current Planning application
6. Misleading and incorrect statements in the Developers Design statement
7. Misleading and incorrect detailing on drawings
8. Misleading and Incorrect statements in Heritage Impact Statement
9. Matters relating to harm, overlooking and loss of privacy at

11. Appendix

1) General position

As general background, this site abuts onto Bierley Marsh, which itself runs around an area of Common Land, which is also urban green space UG291, and both Bierley Marsh, verges to the front of the field and Common Land/UG291 are within East Bierley Preservation Conservation Area.

Bierley Marsh is an unadopted road which carries a legally recorded public right of way – Spenborough Public Footpath No. 6. Section 34(1) of the Road Traffic Act 1988 makes it an offence to drive a mechanically propelled vehicle (eg. a car) on a footpath unless the driver is exercising a private right to take access to nearby land. So, anyone driving along Bierley Marsh, who can't demonstrate that they have a private right to do so, is committing a traffic offence. For info, Section 34 of the RTA 1988 can be found at <http://www.legislation.gov.uk/ukpga/1988/52/section/34> Note we have correspondence from Kirklees stating that they have no intentions to adopt Bierley Marsh, and clearly stating that "Bierley Marsh has not been constructed to standards normally required for adoption" ref HD/G/60/JTH/AB.

There has been considerable evidence submitted as to the legal boundary of Common Land, which the developer was trying to imply did not include areas of loose stone placed to repair damage to the Common from parking, made worse after Kirklees removed trees and built East Bierley School Extension, causing a 40% increase in school related traffic. Further to this and before numerous communications have been made with the school to stop staff and parents using Bierley Marsh for parking. Similarly, residents have been asked not to park or use Bierley Marsh as there is little need, Bierley Marsh is a horseshoe, unadopted (signed) access, to provide access the 7 existing properties.

I have been copied into emails that confirm that Kirklees have accepted that Owens Developments proposed road adoption encroaches on Common Land, but I believe Kirklees may be intending to sell Common Land to Owens Developments to allow his road proposal.

I am also of the opinion that restrictive covenants in the title WYK813938, which state "no building or buildings shall at any time hereafter be erected" restrict work Owens Developments Ltd and others can do on the Common Land.

This is separate to the protection offered by the Commons Act 2006, which states building works and hard surfacing require consent by the Secretary of State and to deregister land requires land swap. I have sent emails, 07/07/2020, 21/07/2020, and 22/07/2020 requesting clarity on these matters to Kirklees Legal team, to date I have had no direct response. Emails I was copied in have advised:

"Where the land to be deregistered is over 200 square meters any application must propose replacement land to be registered in place of the land to be released. Defra's 'Common Land Consents Policy Guidance' States: 'Even if the land to be deregistered is not more than 200m² the Secretary of State will usually expect land to be offered in exchange for the land being deregistered as her policy is not to allow our stock of common land and greens to diminish. The Secretary of State does not interpret the purpose of

section 16 as being to facilitate the deregistration of 'unwanted' or 'useless' pieces of common land or green; but to enable registered land to be released in exchange for replacement land of equal value.'

If the Council sells the common land it would be for the new owner to apply for consent to carry out works or to apply to deregister the land."

My underlying position is that I request that the developers road adoption application be declined and that planning is not approved for this application but possibility consider a compromise position (if the developer wishes to amend his application/reapply), based on the limitation of a maximum of 5 houses historically allowed off a private access. It is noted that at Pre-Planning (see section below) this application was linked with a larger field to the south. As such I believe a much **more appropriate submission should be based upon 1 or 2 properties** in this field, leaving 4 or 3 for the larger field. However, it is also noted that 1 house has already build in the grounds of Cross House.

I also request that Kirklees do not dispose of Common Land, to support road adoption, their actions causing further loss of amenity. Quite apart from restrictive covenants preventing this work, as referred above, the Commons Act 2006 aims to protect Commons and encourages enhancement to add to the benefits to the outlook and general enjoyment of Commons, which Owens Developments proposal clearly does not support in any way. The proposals, as they stand, would lead to loss of Common Land, urban green space (UG291), have significant negative impact on the East Bierley Conservation Area and create an eyesore do to prevailing view onto parked cars.

I am unclear about a much discussed (in the village) land swap, at the time of the East Bierley School extension, offered by a villager, to enable deregistration of Common Land, to enable the construction work, which he confirmed his offer and discussions with Kirklees at the time but advised me did not get enacted. I have asked for clarity around this, as if is the case, villagers would have already lost considerable Common Land before any further loss associated with land potentially sold to enable road adoption. Common land would also appear to have been tarmacked by Kirklees opposite St Luke's, which would have required consent. I have challenged Kirklees on grounds of moral agency not to sell Common Land to Owens Developments Ltd.

As my comments returned, 07/05/2020, Owens Developments proposal, does not adhere to recommendations and Kirklees policy quotes in the East Bierley Conservation Area Appraisal:

"The proposed development, including town houses, is not in keeping with stylistic context or scale of the local area. The Conservation Area Appraisal document (<https://www.kirklees.gov.uk/beta/trees-listing-andconservation/pdf/conservation-appraisals/EastBierley.pdf>), section 9, summaries this point relating to modern building style, "has changed the character of the area and should be controlled in the future", and in the same document Appendix 1BE2 "New development should be designed so that: i) it is in keeping with any surrounding development in respect of design, materials, scale, density, layout, building height or mass; iii) satisfactory

access to existing highways can be achieved. Similarly, Section 6 Urban Grain states "The Green and Bierley Marsh break up the domination of buildings in the Conservation Area and provide a quality open space for the village. Their setting complements the formality and architectural integrity of the surrounding buildings, they also provide gaps in the urban grain to allow for views of the area."

It is also stated in Kirklees documentation that all development should "promote healthy environment, space, landscaping about buildings, avoidance of exposure to excessive noise or pollution";

- The developers design has car parking and access within 1.5m of adjacent property windows.
- Buildings are much closer to existing property than the 21m separation the developer refers to in his own design of space between the new town houses and semis.
- His access and parking are not contained within the field boundary and occupy land in the conservation area and will make access and egress from our property both difficult and dangerous and are over land where Ad medium filum rules apply.

The proposed layout, represents over development of the field, it is not contained within the field boundary or have a recognised boundary wall/fence/hedge and is likely to detract from many of the accolades placed on East Bierley as quoted within the Conservation Area Appraisal and negate the kudos gained with the Green Flag award.

Figure 1 below shows the urban Grain, consisting in the main bungalows with gardens, on-site parking all contained within confined boundaries. The proposed development does not respect the density and height of properties of the immediate area and will not fit in. Proposed dwelling would significantly alter the urban grain of the area and amount to over-intensive 'cramming' in what is a low density area.

The proposed development allows little space for landscaping and I believe that it would lead to gross over-development of the site. The proposed development would not result in any substantive benefit in environmental and landscape terms and would lead to the loss of amenity and would cause negative impact on views.

Further to the point that the proposed layout is not contained within the field boundary. The photos below show the original site fence line before the land was fly tipped, under the excuse that topsoil was being temporary stored for use in nursery business. The then owner was misled on this matter by member of the family who inherited the land. The tipped material was in fact contaminated. The second photo now shows the negative impact on Conservation Area as it stands today. The mounded material also restricts my formally recorded access. I have challenged on this matter to be told that at least it stops gypsies with no acceptance of wrong or offer to put right. I request that Kirklees address the matter of site boundary.

The photo below although schematic, show several matters that would not appear acceptable from loss of visual amenity from the Owens Developments proposal, which significantly impact views from the Common and Conservation area.

I believe the proposed layout is too dense, and it does not provide sufficient space between old and new buildings to maintain the amenity and privacy of adjoining houses. I ask that planning officers ensure that any proposed development is designed in such a way as to reduce any overlooking of mine and neighbouring properties to prevent invasion of neighbour's privacy Human Rights Act Human Rights act Protocol 1, Article 1, stating that a person has the right to peaceful enjoyment of all their possessions, which includes the home and other land. Also, consider Article 8 of the Human Rights Act which states that a person has the substantive right to respect for their private and family life. Private and family life therefore encompasses not only the home but also the surroundings and the countryside

I am also of the opinion the outdoor space is not in proportion with the building. I am advised that to comply with planning guidelines new buildings are required to have a proportionate amount of outdoor space. The proposal would demonstrably harm the amenities currently enjoyed by residents, in relation to safe and available on-road parking, valuable green space, privacy and the right to enjoy a quiet and safe residential environment.

Other matters in Comments include the over developed nature of the site will potentially worsen flooding problems surrounding properties have in gardens.

Roots of mature trees on the western border within the Cenotaph are likely to be affected by proposed construction works causing a risk to their ongoing survival. Similarly, proposed extensive lopping back to the crown of trees could affect future growth. These trees have TPO's and future root growth could affect foundations of any buildings in the future. As such I am of the opinion any building work should be set away from these trees.

I also think sewage disposal could be an issue due to site levels, which may require sewage pumping. The plan below does not indicate any foul drainage. Proposals for drains also appear to be close to St. Luke's, built in 1866 and with signs of structural wear and tear. The building could be damaged by the construction and increased ongoing traffic.

Construction of drains will also destroy the historic fabric of the old footpath possibly predating 1397, as required to access the cross.

There is inadequate local infrastructure to support the high number of properties proposed. East Bierley School is at capacity. This will draw more traffic onto the roads as parents take children to other allocated schools. Similarly, the bus service through East Bierley is limited with no direct route to Leeds, a major employment centre in West Yorkshire.

H&S issues have been raised relating to additional traffic at this location. I have asked for a copy of any H&S risk assessments being considered. This information has not been forthcoming, except comments made by Highways in relation to planning for the East Bierley School extension, which at the time raised several concerns. From comments it would also appear there is no way of mitigating potential additional hazards relating to such many extra cars next to a school and dance studio (and future Village Hall). Putting extra traffic onto Bierley Marsh, which over most of its route is a c.10ft track would cause to traffic congestion or possible incidents. Also, the proposed development is likely significantly increase traffic in the local area due to lack of comprehensive bus service, requirement to use other schools, due to lack of capacity and need for commuting. Provision of inadequate parking would mean the loss of a valuable residential amenity.

Below are more specific matters relating to the main headers of my concerns:

2) Road adoption

Council officers have been asked to advise, the basis of their assessments and associated benefits analysis, required for approval of the developer's road adoption proposal. This is in the context that, if it were approved, a road adoption would circumvent planning protection currently enjoyed on Bierley Marsh (limit to additional 5 houses and traffic restrictions).

In line with, stipulations in cl 41 under section 228 Notices, of Kirklees Highways Guidance Note – Introduction to Highways and Adoptions, I have asked for confirmation that a road adoption **cannot** be progressed if the developer does not own parts of land associated with it. Section 38 Agreements for Highways Adoption (Mar 2019), clearly states that the Council would not enter into a Section 38 Agreement with a landowner who could not prove their claim to ownership. Sections 136, 138 and 178 of Kirklees Highways Guidance Note.

I have also asked for details relating to Road safety audits as with East Bierley used as a rat run and amount of school related traffic, at peak times this area is almost at stand still and presents considerable health and safety risk due to drivers becoming frustrated. Excessive addition traffic from the scale of this development should not be allowed. Similarly, I have asked for information on placement of CCTV cameras 16th June 2018, as these may have been placed without authorisation and any data collected unsafe.

I note that and St Lukes have served Enforcement Complaints, in line with rules and associated Ad medium filum presumptive rights. Extent of these rights are shown below.

Neither or St Lukes wish to dedicate land which the developers proposals affect. I confirm that actions are regularly taken to stop parking and advise vehicle owners that Bierley Marsh, given its horseshoe nature and signage is only to be used by those with access rights, the 7 existing properties.
08/07/2020;

"We are unsure if tarmacking works done to Bierley Marsh, by Kirklees at the time, of the East Bierley School extension, were done in good faith or stealth. Increased school traffic has made it more onerous on residents policing those committing traffic offences under the Traffic Regulations, in line with conditions attached to rights of access along public footpaths (SPE/6/20/30). Continuing efforts have been made, as they have for the last 31 yrs, through correspondence with Kirklees, East Bierley School and direct intervention to make them aware of restrictions. Parking is at a premium in our area and it is also noted that the developer is proposing to remove parking formally identified outside St Luke's."

Commented [SH1]:

As a point of detail and referenced in Highways comments re. application 2012/48/90706/EO/SL, 08/06/2012, ref (K8-8SE/20), parking and drop off issues became much worse after the east Bierley school extension, resulting from a c. 40% increase in associated vehicles and causing significant congestion at drop off and pick up times.

Comments I have also been able to gather from pre-application advice, 2019/00/20193/EO/FT, 23/05/2019, ref (K8-8SE/10), is also cause for concern, referring to a 343% increase in properties on Bierley Marsh as identified at pre-planning. Traffic impact, in percentage terms, is likely to be much more, possibly up to a 500% increase, as current proposals showing 40% more housing in field subject to current planning application compared with pre-planning indicative layout.

Pre-planning correspondence dated 14th May 2019, ref. Q100127, from specifically stated that road adoption was not being requested and I have correspondence from Kirklees stating categorically that they have no plans for adoption of Bierley Marsh. "I refer to your letter 28 January and re-iterate that the Council has no proposal to adopt the street"

If Kirklees approved Highway adoption and subsequent development of two fields takes place, up to 60 additional vehicles will be using Bierley Marsh (currently less than 25% of this number have rights of access and use it). It appears that two-way traffic movement will be required up to the junction of South View Road. Quite apart from associated Ad medium film issues, Bierley Marsh cannot possibly support this flow of traffic and given points above on congestion at drop off and pick up time would cause a significant H&S risk.

The appendix includes emails to council officers, with several specific questions relating to road adoption. I would appreciate comments on all these matters and explanation in the change in Kirklees sentiment as it appears to be Kirklees who are pushing adoption now!

I have also in Comments asked the following questions, amongst others, be addressed as part of the planning process:

- 1) How would Kirklees assess if an adoption offered public benefit?
- 2) How practical is it to only adopt only 45m (total c. 250m) of Bierley Marsh?
 - a. how would an interface be managed with SPE 6/20 given traffic restriction causing an interface onto part of the footpath that has restrictions and that any vehicles continuing onto the unadopted footpath would be potentially a traffic offence.
 - b. Traffic would be able to go either direction due to its horseshoe nature
 - c. Would a gated interface be required?
- 3) Consideration of more extensive development
 - a. Any approval given under this application will be piggy backed to connect a larger 2nd field further down Bierley Maesh
 - b. How would it be proposed to make Bierley Marsh capable of sustaining two-way traffic. Bierley Marsh has many pinch points and appears for much of its length as a 10ft wide
- 4) If Kirklees wish to pursue adoption Bierley Marsh, then surly **this must be its full length and with a one-way system imposed**
- 5) If road adoption is approved what remedies will be in place if the developer fails to meet standards required by planning consent? The developer's submission talks about doing road works to adoptable standards. He is not decisive saying the road will be adopted.
- 6) How will H&S risk from resulting additional cars be managed in an area where there is significant H&S risk to school children and attendees of the Dance school. The developer has also said it his intention to remove protective bollards, which have demarcation utility for school children and others using the Marsh. Proposed road works also compromise current disabled access to St Luke's. Reversing movements of cars from the development onto Bierley Marsh would be dangerous.

- 7) How will economic loss be evaluated the developer's proposals take land identified as parking at St Luke's which is to be developed as Village Hall and provide facilities to improve the mental & physical health of children. Loss of parking is likely to affect owner's business plans and livelihood. Vibration from additional traffic and construction traffic adversely affecting St Luke's (built 1861) foundations, may results in further repairs being required.
- 8) How will loss of footpath utility be provided for the current footpath offers high amenity, a much more heavily trafficked road will impact this amenity as well as cause additional H&S risk, will the developer be required in his proposals to provide a like for like replacement for current footpath which potentially will result in further loss of common land.
- 9)
 - Matters below would not seem acceptable:
 - a. construction of kerbing and transition from adopted road to footpath
 - b. The developers design does not
 - c. Closeness of the developers proposed access to town houses
 - d. The developers proposed access
 - e. The developer has intimated that he wants to remove protective barriers put in by Kirklees and use land
 - f. Plans show considerable traffic movements in and proposed movements of traffic seems to occupy land as well as in full view of the This will cause ongoing disturbance
 - g. The developer has stated that we have possibly giving the impression shielded from sight of all vehicles.
 - i. Turning circles for utility and emergency services are shown outside the site and encroach on common land and land
 - j. There appears to be no provision for bins.
 - k. We are generally by the proposed development and associated traffic movements.

An underlying concern is that the road proposals as they stand will result in all additional traffic movements from the second field past St Luke's. As well as H&S risk this will cause considerable nuisance. If adopted, it should be its full c. 250m length and a **one-way system** needs to be implemented along Bierley Marsh.

The points below were further sent as question in relation to the advice given in Kirklees Highways Guidance Note – Highways Adoption Criteria March 2019.

8 Duty to Consider

- **Best Values.** Please explain Kirklees view on matters relating to economic, environmental, and social value associated with the road adoption proposal. Submissions have referred to economic loss at St Lukes Hall from removal of parking and the impact proposals would have on the social value, of a high amenity area, being compromised. The development is not constrained within the field boundary and sprawls out over the Conservation Area, detracting from visual amenity, contravening, Policy DPL 63 and PLP61, by impacting on keys views from the Common. Similarly, environmental concerns have been expressed to Kirklees over the effect any excavation associated with the proposed development would have on roots of mature trees along the eastern boundary of the field and East Bierley Cenotaph, potentially affecting their stability and causing their destruction. These trees enhance the general setting of the Cenotaph and provide a suitable backdrop.
- **Equality.** Please explain Kirklees view on a Road Adoption proposal, if approved, causing discrimination by compromising a disabled access to St Luke's Hall.
- **Health and Safety.** What is Kirklees view on the additional Traffic associated with the development, far more than current traffic generated from 7 houses, putting at risk old people and children using Bierley Marsh for access to the Common and Duck Pond.
- **Road Network Management.** The document quotes "need to secure expeditious movement of traffic on the road network". Additional traffic generated, should the proposal be approved, would add to traffic issues and associated risks in an already dangerous area, at peak and school drop off/pick up times. Can you please advise on Kirklees position on the major concerns over additional Health and Safety risks associated with the proposal?

12 Design and construction

The developer does not have title to all land affected by road work proposals. Ad medium filum rights exist, and approval will not be given by and St Lukes for proposed works on land they have rights over. The developer is therefore not able to construct works to an adoptable standard. Please confirm that Kirklees cannot approve road adoption if the developer does not have full title to land affected.

15 Partial adoption

Partial adoption, 45m of the 250m crescent, would create an unmanageable interface with a public footpath with traffic restrictions. How would Kirklees propose this interface be managed, if Adoption proposals were approved?

20 Paths which would not normally be adopted.

It is noted that Bierley Marsh is a public footpath, within the East Bierley Conservation Area, adjacent to UG291 and Common Land. Whilst providing a right of access for vehicles to 7 properties, Bierley Marsh has a principle function to allow people on foot to access and enjoy the high amenity area. Road adoption in no way enhances this utility. How are Kirklees supporting this loss of amenity should this road Adoption proposal be approved?

37 Visitor parking places

The design statement associated with this application is clear that visitor parking is not fully catered for and the allocated parking for 2 spaces per 4 bedroomed houses is far under Kirklees specified requirement to provide 3. Parking problems already exist in the area which will be worsened if the proposals, representing overdevelopment of the site (in the context of setting and local grain), are approved and constructed. Kirklees Guidance specifically warns about the likely need for suitable arrangements to be made to ensure parking is managed and maintained. What actions would Kirklees take in such circumstances?

Further questions below relate to **Highways Guidance Note – introduction to Highways and adoption March 2019:**

3 Meaning of Highway

It is noted that part of Bierley Marsh is a highway, SPE/6 (as cl26, to be Old Highways – any path that has existed since 16 December 1949) and has restrictions as stated within the Definitive plan.

The Pre-Planning enquiry submitted by [redacted] 14/0/19 specifically states that "it is not proposed to promote the road for adoption". Kirklees correspondence has also stated that Kirklees has no intention to adopt Bierley Marsh. What has changed?

As a general principle it would appear that parts of Bierley Marsh, defined as public footpath, would be affected by the road adoption proposal and to maintain the utility of the footpath, would require a diversion order and Secretary of State for Transport approval. Is this the case?

21 Dedication and Acceptance

As 3 above it would appear that there is no need to dedicate land as Highway. In any event

It has also been advised that [redacted] have continuously objected from 1991 to use of Bierley Marsh by vehicles with no right of access. The main issue being school traffic using Bierley Marsh as a turning circle, for drop off and school staff parking. This made worse when Kirklees extended East Bierley First School. Kirklees have been contacted on these matters and representation made to former school head, Mr Newby and more latterly the new head, via a Kirklees communication most recently in Feb 2020. The nature of Bierley Marsh, a horseshoe track and signage as unadopted also does not support usage by vehicles other than access to the 7 existing properties.

It is understood that Kirklees are legally unable to approve road adoption when the developer cannot show full title over land affected. Is this the case?

41 Section 228 Notices

I understand that Kirklees can post notices under section 228 of the Highways Act 1980 saying that it intends to take on the road as publicly maintainable highways. Please advise if Kirklees intend to serve section 228 notices. **Please take this email as an objection if this were to happen.**

3) Loss of common Land

It is noted that Kirklees accept that the legal boundary of the Common land adjacent to Bierley Marsh, is such that the developer's road construction proposal encroaches c. 2.5m onto the Common. I am awaiting response from Kirklees officers on their view on **"moral agency"** if they were to sell a strip of common land to the developer to enable proposed road works. Detailed questions, requiring fuller response are included in email 28th June 2020. I have asked for clarity on processes around possible deregistration of Common Land at the time of the school extension as plans below.

Commented [SH2]:

17/07/2020 goes on to state:

"Representation on grounds of "moral agency" has been made to Kirklees legal on this matter as I am aware that Kirklees may be considering sale of "a slither" Common Land to the developer to enable his road proposals. I believe Kirklees have enabled deregistration of Common Land to build the extension of East Bierley first school and that this contravenes restrictive covenants relating to the common land as the title document clearly states. Also, required land swap required with deregistration and consent under the Commons Act 2006, appears not to have been enacted. The villagers and visitors to the Conservation Area and Urban Green Space at East Bierley should not be subjected to further loss of Common land.

Please confirm your intentions on this matter in particular explain how Common Land was previously deregistered to allow East Bierley School extension and how further common land would be deregistered to allow a road adoption proposal, where Restrictive Covenants associated with WYK813938, clearly state "no building or buildings shall at any time hereafter be erected"

It is clear that Road adoption would allow the developer to circumvent the planning protection that Bierley Marsh enjoys; restricting development to 5 houses (off a private access) and maintaining control over future traffic levels, with no benefits to the wider amenity, community and local residents or visitors to the area."

At the same time, in order to attempt to protect the Common in line with requirements of the Commons act 2006, I am awaiting a response, to my request, sent by email to Kirklees Legal 21/07/2020, to be given the opportunity to purchase

the said strip of land, if a disposal is to be progressed.

If Kirklees proceed with a Common Land sale,

I request that the council give an assurance that, if it does dispose of the land, it agrees to ensure that no development of the land takes place without consent under s.38 — and that in the absence of consent, it will take enforcement action (resorting to s.41 if necessary).

4) Local support

As well as many of the 76 Comments on this application being against it, comments below as my email, 08/07/2020, highlighting significant local opinion supporting my views.

"Individual objections have been sent in responses to consultation on planning application 2020/90996. This submission is on behalf of properties on Bierley Marsh; St Luke's Church Hall, Chapel Cottage, (636 Hunsworth Lane).

We object to any, part or full road adoption proposal relating to Bierley Marsh. We confirm that we are of the opinion that the Ad medium filum rule applies over parts of Bierley Marsh and verges in front and adjacent to our properties. We do not give the developer any approval to carry out works over this land and we do not wish to dedicate land for road adoption.

We maintain that the developer cannot show title over a large proportion of land over which his road proposal runs and as such his road adoption application cannot be approved. Sections 136, 138 and 178 of Kirklees Highways Guidance Note. Section 38 Agreements for Highways Adoption (Mar 2019), clearly states that the Council would not enter into a Section 38 Agreement with a landowner who could not prove their claim to ownership. It is also the case that Bierley Marsh is signed as unadopted, is horseshoe in nature providing no utility other than accessing existing properties. Kirklees have also confirmed previously in writing that they have no intention to adopt Bierley Marsh.

Furthermore, the developer's proposals encroach on Common Land. We understand that Kirklees are considering selling Common Land to the developer, but this would still leave large areas of his proposed road works, where he has no title rights. Separate challenges have been lodged with Kirklees on grounds of their "moral agency" in relation to any sale of Common Land and we await response. The attached plan has been submitted previously showing land subject to Ad medium filum viae rules. An additional plan is attached for land associated with Chapel Cottages Ad medium filum viae presumptive rights.

We are unsure if tarmacking works done to Bierley Marsh, by Kirklees at the time, of the East Bierley School extension, were done in good faith or stealth. Increased school traffic has made it more onerous on residents policing those committing traffic offences under the Traffic Regulations in line with conditions attached to rights of access along public footpaths (SPE/6/20/30). Continuing efforts have been made, as they have for the last 31 yrs, through correspondence with Kirklees, East Bierley School and direct intervention to make them aware of restrictions. Parking is at a premium in our area and it is also noted that the developer is proposing to remove parking formally identified outside St Luke's.

Part adoption of Bierley Marsh would create an unmanageable interface with the public footpath.

Precedent set, that planning was initially rejected for a single property at Cross House, because of the application was to result in 2 additional cars using Bierley Marsh.

Objections also relate to potential damage to Bierley Marsh, properties, vehicles and trees from construction activity and issues resulting from excessive additional future vehicles in a high amenity and high-risk area being adjacent to the school and dance studios.

, which we understand that the developer is now proposing to fund. It is on land the developer does not own and the proposal would not represent an authentic representation of our heritage.”

5) Discrepancies between statements made at Pre planning compared to those made in current planning application

As stated above I have managed to receive some information under Freedom of Information. Whilst recognising that this is superseded, the original pre-planning outline plan attempted to recognise and limit impact on the local amenity and neighbouring properties of any development off Bierley Marsh. I therefore believe the comments made at pre-planning serve as useful aid to compare and review the extent of the negative impact the current proposals, if approved, would have and Owens Developments complete disregard for our privacy and also comments made by Highways at preplanning. Below is the Pre-planning Indicative plan that shows a development, whilst I believe still overlooks and present issues, but is an order of magnitude better than what Owens Developments are proposing. Boundaries are respected and appear correct and respect the Conservation area land. Note however the grey area showing Bierley Marsh also encompass encroachment onto Common Land, ie the loose stone repaired areas.

Highways comments, about provision of adequate parking have been ignored by Owens Developments proposals. The design statement also states parking is available off site. That is not the case and the area already have parking pressures.

Despite Highways concluding comments at pre-planning "unlikely to be considered acceptable". The current proposal is a 50% increase in housing density, the current over development has worsened the position. 4 bed town houses should have 3 parking places and only 2 are provided. Highways response recognised benefits of integral garages are to be considered as contribution to parking provision. Integral garages are not being provided in Owens Developments proposal.

It was also stated that a design should accommodate for existing parking on Bierley Marsh, referencing 4 vehicles parked near St Luke's. Owens Developments road adoption proposal will take away the parking at St Luke's, identified in the East Bierley Conservation Area Appraisal documents, causing negative economic impact of the St Luke's ongoing activity as dance class and proposed Village Hall, offering much needed support to local residents.

Below is a copy of text

05/07/2020

The Pre-Planning information I was sent includes an initial letter submitted by 14/05/19 describing a proposal for 2 sites, 4 houses in this field and for 13 houses in the . Whilst I don't support the proposed pre-planning layout, density and resulting loss of privacy, the comments made at pre-planning showed a much more sympathetic approach to the development in the context to limiting impact on the Conservation Area and impact on adjoining properties. I request that points made at pre-planning are considered to come up with a compromise position that reduces impact the Owens Developments proposals will have.

It is stated that land is "non allocated" I would hope that this presents an opportunity to build a development which is sensitive to the local area, reflects the local grain and have minimum impact on East Bierley Conservation area. Specific reference is made in the Pre Planning letter from Quod :

- 1) Policy PLP61 Urban Green Space protects non allocated valuable green spaces. The Owens Development proposal does not comply.*
- 2) The letter acknowledges that "The shape and setting of the Site is such that the development abuts directly onto the Conservation Area" and goes on to state "that the proposals match this broad grain and would not detract from the setting". Objection 76 on current application clearly shows the local grain, as bungalows with large gardens. Local grain is further shown in Image1 below. The Owens Development proposal for Town Houses is totally out of context with local grain and rather than abutting the Conservation area the developments is partly on Conservation Area land.*
- 3) The states "The proposed development would not impact on the key views into (or out of) the East Bierley conservation Area (EBCA),*

(noted development was proposed to be contained and partly hidden behind a boundary wall). The site will not therefore have a detrimental effect on the settings of the conservation area” The plans submitted by Owens Developments have significant negative visible impact. As stated in objections, anyone walking down Bierley March will be presented with visual clutter caused by a bank of car parking. Comment and concerns are also made that due to the overdevelopment of the site and inadequate space, the developer has not made provision for the minimum specified parking spaces, access and turning for service vehicles or contained bin collection points. The development is not contained in the field boundary, see Image 2 below and also reference to fly tipping.

- 4) *conclude that the indicative plan “demonstrates the sites capacity within the context of the constraints and character of the area” and refers to provision of 4 houses . The Owens Development is a 50% increase on this. To support his proposed overdevelopment, the Developer has made misrepresentation in his design statement, falsely suggesting*
- 5) *The four houses shown on the indicative plan are contained within the field boundary, which I assume will have a proper boundary wall/fence/demarcation, so will not present the visual clutter that current Owens Developments proposal appears to shows, with parking be sprawling out onto Bierley Marsh and the Conservation Area.*
- 6) *The letter refers to paying an off-site contribution to affordable housing. The Owens Developments proposal refers to provision of affordable housing. However, I am informed by a villager, with property renting interests, that he was informed that there was an ambition to achieve over £300,000 for the town houses.*
- 7) *It is noted that pre-planning letter concluding remarks state “it is not proposed to promote the road for adoption”. Subsequent investigation has confirmed that road proposals, to achieve 4.5m and turning circles, put forward by Owens Developments Ltd, require encroachment on Common Land.*

From the documents I have received from Kirklees Highways, it appears they made similar comments to planning application 2020/90996 as they made at preplanning. These comments appear to have been largely ignored by the proposal put forward by Owens Developments Ltd. Concerns are expressed over; non containment of turning circles for utility vehicles, bin collection facilities and parking within the site boundaries, loss of parking opposite St Luke's. Min road widths for development, greater than 1 house, needing to be at least 4.5m.

The preplanning documents show access from 2 sites using Bierley Marsh. Comments made on application 2020/90996 have referred to limitations of development off private access, being limited to 5 houses and vehicular restrictions on Bierley Marsh, limiting access to those with access rights. A further concern is

that pinch points exist on Bierley Marsh, c. 3m,

I am not sure the proposals for access are assuming land immediately

This land was formally clinker and rough stone verge and was improved for parking and access later tarmacked by Kirklees. Ad medium filum rights exist on this land and Kirklees have confirmed by email that will not be affected or restricted in any way. are registered at the Land Registry. I assume the same applies to St Luke's, which in addition has parking shown on the EBCA appraisal plans. It has also been noted that parking and access shown on Owens Developments

As a final point reference is made in 14/05/19, as the northern site being allotments. This land was formally allotments and I understand is still registered as allotments.

6) Misleading and incorrect statements in Owens Developments Design Statement (2020)

Below is a copy of comments made 07/05/2020

The Design Statement has many incorrect and misleading statements.

Page 1

Red line is incorrect on southern boundary. Noted also that

Page 2

The statement that "Informal parking for primary school" is in correct. Kirklees have in the past written to the Scholl advising status of Bierley Marsh and request that school staff are advised not to use it for access or parking.

The statement made "carries a public right of way" is correct in as far as it goes. Below the fuller descriptive given to me by Kirklees, puts significant restrictions on usage of Bierley Marsh and noted was a contributory reason for initial rejection of a previous application for one house with two cars:

"Noted as general background, Bierley Marsh is an unadopted road which carries a legally recorded public right of way – Spenborough Public Footpath No. 6. Section 34(1) of the Road Traffic Act 1988 makes it an offence to drive a mechanically propelled vehicle (eg. a car) on a footpath unless the driver is exercising a private right to take access to nearby land. So, anyone driving along Bierley Marsh, who can't demonstrate that they have a private right to do so, is committing a traffic offence. For info, Section 34 of the RTA1988 can be found at <http://www.legislation.gov.uk/ukpga/1988/52/section/34> "

In response to the statement "The site is well located within a village which contains a number of amenities", the school will not have capacity at the risk of current residents not getting places for their children. There is also a much bigger planning application for 48 houses within 300m of this site, which will put even more pressure on local infrastructure. Made worse by ongoing and planned larger developments at Birkenshaw, BlueHills and Drighlington.

People cannot get in local doctors or dentist surgeries. Additional traffic generated by the development will add to the already horrendous traffic in East Bierley at Rush hours, due to driver using East Bierley as a rat run.

The site is located adjacent to a high amenity area and today (03/05/20) I saw old people with zimmer frames walking down Bierley Marsh (slowly) to enjoy the conservation area, pond and see the ducks. Similarly, it is still used by horse riders and horse drawn carriages, with the knowledge they are only likely to come across, minor amounts of traffic on the footpath.

The developer is proposing, through his adoption proposal, to make Bierley Marsh a much busier footpath with temptation for road users to drive the full length of Bierley Marsh and to potentially cause problems for residents, access and parking and visiting the duck pond., with an unmanageable interface with the footpath.

Page 3

Statement " is incorrect.

is

. Statement re a completely incorrect statement.

" is

,

the developer can suggest that design comply with BR12 and

Challenge to statement "Access to the Site will be via Bierley Marsh". This is covered above in detail elsewhere.

Noted that in the past a planning application for one property, with two cars was turned down, due to the impact the two cars would have on Bierley Marsh.

We have letters from Kirklees Council which, in no uncertain terms stated they will not consider Adoption, of Bierley Marsh (ref HD/G/60/JTH/AB and TF/14/100/751/CJ/PJD) and more recent emails 12th & 19th Feb 20 confirming that the current parking and access rights we enjoy will remain unchanged. There are concerning legal implications of developer's proposals, which requires use of land the Developer does not own, encroachment on the Conservation area (UG291) and common land. Also, Ad Medium Filum) implications.

Traffic around Bierley Marsh is in both directions round the horseshoe track which fundamentally is c. 3.05m wide with passing points. If partial adoption c. 45m is approved the movement of traffic cannot be practically policed, and the latter point is conducive to promoting traffic offences.

the developer is showing as part of road works proposals and causing nuisance to other residents with right of access, I would contest that the proposal is unworkable.

The developer states houses will have 2 parking spaces. Kirklees guidance requires 3 for 4 bed houses.

Page 4

. I have had no approach or dialog from the developer on this matter. Land take is shown to encroach on Conservation area, UG 291, take recognised parking and common land. All earlier rumour and speculation was for development to rely on an access to the east of the larger field and adjacent to Robert Lights land.

Page 5

I would contest with over 500 houses under construction already or already in planning ,within a short distance of East Bierley, the likely on coming recession and aging population, instead of high density, out of character modern housing, there is need for housing for retired or older couples, as single level bungalows with enjoyable garden plots. This would be in line with current housing in the immediate vicinity and would likely have less impact on traffic nuisance.

The developer states sustainable development. I am of the opinion due to site levels; pumping will be required for sewage, with ongoing power consumption.

Page 6

5) Bierley Marsh is ...approximately 5.5m wide is not accurate. This argument against this is clearly given above. In summary, as extract from

a. I have lived on and we have many photographs (submitted separately) showing the extent/ form of Bierley Marsh. I also have correspondence from Kirklees confirming Bierley Marshes status and restrictions: it only has vehicular access to those, with a formal right of access to their property. Also stating Bierley Marsh, at its widest, is a 10-foot-wide (3.05m) footpath.

b. Bierley Marsh is clearly signed as unadopted. It is a horseshoe footpath used to provide residents access, visiting and general servicing.

c. Photographic Evidence shows damage to boundary edges of Bierley Marsh, due to parking encroachment. This led to Kirklees placing bollards and follow on work after damage, due to parking, worsened when protecting trees were removed; superficial stone placement and bollards being installed by the

Preservation Society and supported by Kirklees. Further surfacing work by Kirklees, at the time of the school extension, have made demarcation less clear, but these repair works are totally within the boundary of UG291, the green area which villagers, school, St Luke's (future plans for Village Hall) and others enjoy. Without the risks from excessive traffic which this and potential follow on development would bring.

d. It has been claimed that repair works are unauthorised and bollards, which have demarcation and safety utility, as well as providing protection from encroachment should be removed. This does not negate the fact that these works are within the UG291 boundary.

e. Bierley Marsh including adjacent verges are in the Conservation Area. Proposed building work is outside the owner's field boundary, shows negative visual impact from orientation and amount of car parking. Encroachment of UG291 is shown for turning circles for to access for emergency and refuse services.

Statement the proposals would not ultimately materially add to highway Safety concerns- Do not accept.

The horrendous traffic problems at the Bierley Marsh and South View Road junction is subject to much complaint over control of parking, obstruction to sight lines and indeed there has been recent increased traffic control measures talked about and road marking. Ultimately up to 40 extra cars (see elephant in room statement above) would make the resulting traffic problems the proposal would create represent a significant additional H&S risk. Comments are often made that the area is an accident waiting to happen. Frustration with additional traffic trying to enter/exit Bierley Marsh into South View Road adds H&S risk, compounded by closeness of school and dance studios.

It's not clear what traffic data has been used to assess any pre-planning assessment, but I contend that this information could be unsafe on timing and potentially other grounds. Positioning and lack of approval of cameras, by the authorities, erected in the last week of term first week of school holidays has been a point of concern for parents and Dance Class staff I am advised that Kirklees had no record of application for or approval of cameras being installed.

On a personal level the developer has said that his ambition with all development he has planned for Bierley Marsh, he wants to present a case for routing all traffic to the South View Road junction. That would mean we would suffer all the noise and headlight nuisance from up to 40 extra cars. Surely a **one-way system would be needed**.

The developer states the development would not ultimately add to highways safety concerns. Previous comments made by Highways in relation to the school extension do not support this. Over a c. 400% increase in cars using Bierley Marsh, close to the school, dance studios at St Luke's (future Village Hall) will clearly impact on H&S matters and road users convenience. Disabled access to St Luke's will be compromised.

Page 7

Clarification on bin presentation point The underlying construction and width of Bierley Marsh, a c. 3.05m (10ft) footpath, cannot provide turning circles for bin waggons and fire engines with using land not in the developers control, and requiring and take from the Conservation area (UG291) and

Statement there is significant visitor space provision is incorrect.

The existing parking adjacent to St Luke's has been retained – not in its entirety The developer's road proposal would appear to take most of recognised parking at St Luke's. This will affect the lively hood relating to the dance studios and future Village Hall status. Closeness of proposed road works will be compromise ramped disabled access to St Luke's.

Statement a bin presentation point has been provided – this is not evident on plans

Road width in the site are below 4.5m as required by Kirklees/National specifications.

Page 8

The proposed development is well designed – do not agree. Affecting a Conservation Area requires a higher standard of design and layout that fit with local grain. The developer's proposal is for too dense and not in keeping with location.

We believe that the proposed development represents unacceptably high density / over-development of the site. Proposed layouts will mean the view from Conservation area will be onto mainly cramped parking. No consideration appears to have been given to BR12, leading to the development over shadowing , and causing noise, car headlight, pollution, and privacy invasion issues. Although highly unlikely given restrictions on Bierley Marsh, we are not against a more sensitive proposal of possibly one or two high spec. bungalows, positioned, conforming to the 21m (guidance separation new to existing windows in habitable rooms, Policy BE12), so as not to impose on residents and fit in with the local area. Below is the plan showing 2 adjacent properties, bungalows to North of the field, their combined plots look similar in size to this plot and a development on this basis would seem more appropriate.

There has been no detailed dialog about matter directly affecting residents and wider villagers.

Timing of the application has meant it is/was difficult to coordinate response and stinks of trying to get the due to lockdown. Hopefully, the number of negative social media comments will show the level of resistance there is to these proposals within the wider East Bierley community.

Statement "takes opportunity to improve local environment – do not agree.

The proposed buildings, as submitted, are over-bearing, out-of-scale to the site and out of character in terms of its appearance compared with the general architecture in the village. No precedent has been set in the immediate village for this type of accommodation, density of build and architectural style. The current Conservation Appraisal document applauds the general architecture within the village from which this development will detract from that. The orientation of the proposed development is out of sync with the general flow of properties on Bierley Marsh, which are mainly detached properties with gardens to the rear and facing out to the green.

Page 9

Preserve the setting of the listed memorial garden – disagree

Provides for, (implied) affordable house and local peoples needs. Do not agree, a villager was informed by a member of the developer's family that the expectation is for town house to sell at > £300,000. I can be implied that semis will not have affordability status.

A site visit is important here to get full perspective impact on development particularly three-story living unit. Step aside from the direct on view of the memorial by less than 10 deg. angle, the backdrop of the proposed housing will mask the appearance and detract from the heritage and importance of the Cenotaph, which is visited by many people and over 100 on Remembrance Sunday.

There are also some properties on Bierley Marsh with significant heritage and historical importance, to which the general, design, appearance and build would not compliment and from which this proposal detracts.

Page 10

Red line boundary in wrong place.

Significantly more traffic will impede public access including mother with your children or youngster taking their first steps, riding bicycles, families taking a stroll, horse riders, etc.

Page 11

All properties surrounding the site to the north, east and south have documented flooding in gardens and in underdrawings required remedial work by Yorkshire Water. The density of the development with amount of hard surfaced area will potentially add to or create further issues. Made worse with lack of capacity at storm times in the sewer in South View Road causing drains to back up.

Concerns in objections and to Kirklees appropriate depart directly about potential damage to tree roots due to construction activity, adversely mature trees in the Cenotaph. Also said roots affecting stability of any future construction works. Similarly, extent of tree lopping to another tree is likely to cause long term harm to the tree.,

Page 12-17

Building design does not fit local area or local grain.

On plans heights shown to our walls are inaccurate, giving impression there is an existing element of screening which is not the case. Elevations (chosen X sections) and 3D images do not

The developer quotes, separation of 21m between the 2 new elements. He has not provided and made false statements relating to overlooking and impact his proposal

His statement we conclude that the overall minimal impact on residential amenity is negligible is clearly misleading.

The proposed buildings, as submitted, are over-bearing, out-of-scale to the site and out of character in terms of its appearance compared with the immediate architecture and local grain. The Conservation area appraisal document applauds the general architecture within the village from which this development will detract. Local grain is mainly bungalows with landscaped gardens. No precedent has been set in the immediate area for this type of accommodation (town houses) or density of build. I understood that councils are under a legal duty to have regard to the desirability of preserving or enhancing the character and appearance of a Conservation area. A higher standard of design is required in a Conservation Area.

7) Misleading and incorrect details on drawings

The overall site boundary, red line plan, is incorrect.
an angle and extends into the site area shown by the developer:

is at

Below is the view

of the wall to the southern edge of the field. The developers plans show removal of trees as shown and we will have an uninterrupted view onto proposed building and parked cars as the proposed homes

The above wall is in the order of 3ft 1in high (95cm) at the top of the drive. The developers plans state the wall as being 5ft high. This wall tapers to 1.2m clearance from our rear lounge window.

The road is 1.2m high (3.9ft) , which is 1ft 10in high (55cm) , roadside. The developers plans show it to be 6ft high. The road is considerable higher than land on our side of the wall.

I am worried that anyone undertaking a desktop review will be given the impression that development. Can request that planners challenge the developer on these errors.

There is some uncertainty as different plans/images submitted by the developer would appear to show different views and orientation.

Highways Development Management have several concerns regarding the developers plans :

Highways comments as responding ref. 8-8SE-10, 20/05/20.

1, Parking along Bierley Marsh is likely to be at a premium given the proximity of the church and school and the provision of enough off-street parking is considered essential. The 4 bedroomed semi-detached dwellings should therefore each have 3 off-street parking spaces.

2, Access and turning for the parking spaces for plots 3 and 4 could be difficult and sight lines onto Bierley Marsh could be poor. The applicants should confirm the sight lines are adequate for the anticipated speeds along Bierley Marsh and provide swept paths to demonstrate that a vehicle can comfortably turn and manoeuvres into and out of the proposed parking spaces.

3, No bin collection points are shown for any of the proposed dwellings. These should be hard paved and positioned such that bins can be left out on collection day without either obstructing the carriageway along Bierley Marsh or the proposed driveways

4, There is no internal turning provisions for parking spaces 9 and 10.

9) Misleading and Inaccurate Statements in Heritage Impact statement

Page 6 Review Urban Grain

Developer states Bierley Marsh breaks up domination of buildings – why is he proposing to cram 6 out of character, to local grain, houses on the site. One max 2 houses should be considered.



The developer states – the proposal introduces a new two-story terrace of houses facing onto Bierley Marsh.

3 Proposal – page 10 Layout

The developer states minimising the impact of vehicles upon surrounding conservation area when viewed from Bierley Marsh. Bearing in mind parking and access appear outside the field boundary, on land designated Conservation area, his plans show a further 8 vehicles (note 12 parking places should be provide) on full view from the Common and will look ugly:

3 Proposal - page 12 Access

The Developer states – Access is provided by the existing roads serving Bierley Marsh which will be enhanced to Adoptable standards.

He goes on to say we believe at worst this proposal will have a neutral impact on the surrounding Conservation Area. This statement is ridiculous. How when 2nd field is developed, can c. 400% increase in resident traffic and up to 60 additional cars (current less than 14) have a negative impact?

10)Conclusions

There is massive local objection to this application evidenced in this submission and Objections. The site if the application is approved will be overdeveloped. Parking arrangements are not adequate or in compliance with Kirklees Planning Pre-application advice and will put pressure on street parking which is already an issue. The amenity of the area will be compromised.

The proposed buildings, as submitted, are over-bearing, out-of-scale to the site and out of character in terms of its appearance compared with the immediate architecture and local grain. The Conservation area appraisal document applauds the general architecture within the village from which this development will detract. Local grain is mainly bungalows with landscaped gardens. No precedent has been set in the immediate area for this type of accommodation (town houses) or density of build. I understand that councils are under a legal duty to have regard to the desirability of preserving or enhancing the character and appearance of a Conservation area. A higher standard of design is required in a Conservation Area

The orientation of the proposed development is out of sync with the general flow of properties on Bierley Marsh, which are mainly detached properties with gardens to the rear and facing out to the green. Any arguments the Developer is making on affordability need questioning. A villager has told me that when he enquired the response was that the expectation is that town houses sell for >£300,000, by deduction seems possibly lower but still not affordable housing levels.

The developers plan show part of his development outside the field boundary and within the Conservation area and create visual clutter with the view from the common at eye level being mainly a row of parked cars. There has been no attempt to provide containment of the development within the site boundary, hidden behind appropriate boundary wall/fence/hedge. It would have a major negative affect on visual amenity.

Access and turning circles encroach on common land. Highways have made concerning comments on the proposals lack of parking provision, requirement for off street parking, sight lines and matters relating to turning requirements for waste collection (and bin storage) and emergency services, not being adequate. These proposals would adversely affect highway safety and convenience of road users and residents parking. Disabled access to St Luke's will be compromised by a road adoption proposal.

Bierley Marsh is unadopted and designated in part as a public footpath with restricted vehicular access rights, to the current 7 properties.

As a private street, I believe house building on Bierley Marsh is limited to an additional 5 properties, of which 1 has been already been built. By submitting a road adoption proposal, I believe the developer is attempting to circumvent planning protection currently enjoyed to the area adjoining Bierley Marsh.

I am concerned that Kirklees appear to be considering sale of common land to the developer to enable road adoption. Whilst I accept that common land can be sold, I have made representations to Kirklees on grounds of moral agency, not to cause further loss of common land, given common land, with no replacement already took place when East Bierley First school was extended.

Significant legal and moral arguments have been presented against road adoption and further loss of common land. A road adoption can only happen if Kirklees sell common Land to the developer and given previous actions by Kirklees related to the East Bierley school extension and tarmacking of parts of Bierley marsh it is not clear which processes were followed in relation to land swap and consents. Questions have been asked of council officers but information not forthcoming.

Section 38 Agreements for Highways Adoption (Mar 2019), clearly states that the Council would not enter into a Section 38 Agreement with a landowner who could not prove their claim to ownership. My view is that unless the developer can claim stronger ownership rights Kirklees cannot adopt a road (ie, if the developer can not show full title)

over a large percentage of the land over which the developer's road proposals are over.

and confirmed that we do not wish to dedicate land. At same time have presented evidence that I have challenged unauthorised use of Bierley Marsh by person that do not have right of access. Formal planning enforcement complaints have been submitted relating both to loss of further common land and road adoption.

Pre-planning submissions linked this application to a second field, 11m away. It is common knowledge that the developer is interested (has interest) in both sites. Any approvals relating to access from this application will be piggy backed for the second application. Pinch points are such that Bierley Marsh can not in anyway support 2-way traffic without further massive loss of common land and major road works which would destroy the character and outlook of the Conservation area. I have correspondence from Kirklees stating that Bierley Marsh was not in any way constructed to adoptable standards. Additional traffic so generated would change the quite enclave with the many benefits described in the Conservation area appraisal. Extra traffic, possibly a 340% increase on current (by residents alone) would result significant H&S risks due to location and issues currently faced at school drop off and pick up times and also have a devastating effect on local amenity. I

f both sites referred to at Pre-Planning were to be constructed together, given the unsuitability of Bierley Marsh to carry heavy traffic, (and likely damage to St Luke's if heavy vehicles were to run on Bierley Marsh), and I ask Kirklees to ensure that adequate access must be maintained during construction and protection from nuisance be provided.

If Kirklees went ahead with common land sale required for this proposal and further sale for adoption of highway to allow access to the 2nd field the negative effects on

local amenity would be devastating. What is more I have submitted arguments that given only partial adoption of Bierley marsh would create an unmanageable interface with SPE 6/20, which has traffic restrictions, the only viable solution would be full adoption of Bierley Marsh, 250m and a one way system.

There are clearly concerning flaws, incorrect and misleading statements in the developers Statements and on his plans aimed to give the impression that adjacent properties are not overlooked by the proposed layout.

He has stated that he has allowed 21m clearance between semis and townhouses, surly, similar

The developer states

Such false statements in my opinion should question the validity of the developer's application. I believe Owens Developments proposal directly contravenes Policy BE5. It does not respect the local vernacular, street scene or scale and proportions of surrounding buildings, and would be wholly out of character for the area, to the serious detriment of the visual quality of both local built environment and existing levels of private residential amenity. Reference to noncompliance with other policy documents are quoted in the made body of this document, relating to requirements for a design in line with surrounding houses, scale, density, access and local grain.

The proposals as they stand detract from the high amenity area. Whilst progress is inevitable, I ask the planning committee to consider a compromise position that is more acceptable. One or two bungalows sensitively designed and positioned to enhance the outlook from the common land, conservation area and add value, not take value away from the high amenity area.

With an aging population, there is a greater need for quality bungalows for retirees to downsize to, with good amenities. This location is ideal for this. It is likely that in the post lock down era that we are in recession, unfortunately causing a fall-off in housing demand from younger families.

I formally request that the council take my objections into consideration when deciding the application. This proposed development ,as it stands, will destroy the beautiful area, recognised by the Green Flag award, that the villagers of East Bierley and visitors enjoy today.

Appendix

From:

Date: Tue, 26 May 2020 at 08:34

Subject: Questions relating to Planning application 2020/90096

To: PublicRightsofWay <publicrightsofway@kirklees.gov.uk>, Landownership

<Landownership@kirklees.gov.uk>, <land.charges@kirklees.gov.uk>,

<Highways.DevelopmentControl@kirklees.gov.uk>,

<Highways.Section38@kirklees.gov.uk>, <local.development@kirklees.gov.uk>

Questions relating to Planning application for 6 ,3&4 Bedroom houses at St Lukes, East Bierley, (2020/90996)

I have been in discussion with departments in Kirklees regarding my concerns and questions relating to the above planning application and I have **realised issues are complex and will involve a number of council departments therefore I have forwarded this email on this basis.** The points raised in this document have been given to Planning in several objections. This document seeks to build on these objections which in my mind have now formed the basis of several questions. If possible, can you please respond so I can complete my objections to this planning application before 05/06/20.

My questions relate to land ownership, loss of Common Land, basis for road adoption and the scale of the developers proposed layout and practical matters relating to traffic flow on Bierley Marsh. The developer also makes false and misleading statements in his Design statement which I have also referred to in the context of the impact of his proposed works on

. **Note specific matters in relation to SPE/6 footpath have been covered separately.**

Concerns over Land Ownership and loss of Common Land

Land Registry for WYK813938 plan (attached) appears to show a boundary for common land with the dotted edges of Bierley Marsh. Legal presumption, as referenced below, may also apply.

, I have seen the gradual deterioration of the common land to the west side of Bierley Marsh due to parking and subsequent repair work undertaken by the East Bierley Preservation Society, with Kirklees support to lay "loose stone" and place bollards beyond, the legal boundary (into the common land) with Bierley Marsh, to stop further encroachment and damage. As I understand, this work, repairing damage with "loose stone", did/does not need consent. My interpretation of this legal boundary is based upon the supporting photos attached, which clearly show that the boundary encapsulates the area of common land now repaired with "loose stone". **The legal boundary is the legal boundary and does not move.** As such my view is the developers plans for access, turning circles and for road adoption encroach on common land which requires consent under Commons Act 2006. **Can you please comment on above and please advise if Kirklees have a methodology for defining a legal boundary between Bierley Marsh, SPE/6/20 and common land?**

Plan referred to as, Plan1, is available open source and is referenced as Kirklees source data. Note this plan and comments in the letters attached, gave me the notion that

is deemed any rights to centre line of Bierley Marsh, I had also assumed the area would. Similarly, as this plan might suggest, in the case of Kirklees owned land, the presumption, that where a conveyance of land abutting on an access way, by someone owning land on one side of it only, then there may be presumption they own to the middle line and that this half of the access way is included in the conveyancing. **Can you also please comment on this matter, in particular advise what if any rights the developer**

The boundary areas shown on the developers plan (BIERM-NJA-02-XX-DR-A-PL_01) included in the attachment, appears to encroach on land where I would appear to have Ad medium filum rights. **Can you please comment on this matter.**

I now understand that there is a difference to the footpath SPE/6/20 and Bierley Marsh and that potentially Certificate B will reveal the owner of Bierley Marsh and that **the developer may have to prove title to the land required for road adoption.**

I am interested to know who the owner is, as I expect Kirklees also are, as we have both endured expenses over the years carrying out maintenance and repair. **Can you please comment on question above re. Developers required title over land?**

I am not sure if I will be deemed but understand these. In any case, I have shown no intention to dedicate land. I have maintained Bierley Marsh and tried to regulate parking but understand the area along the frontage of St Luke's, is shown as parking in the plans within the Conservation Area Appraisal. Note that SPE/6 has restrictions on vehicular access to non-residents

to contact parents and advise teachers that Bierley Marsh has restricted access and should not be used for parking or in/out drop off. Latest contact was made by Kirklees Council in Feb 20 at my request: -see below

"Can you please contact your colleagues in Kirklees Education, specifically the Head of East Bierley First School, advising of the restriction on access to Bierley Marsh and instructing her to stop school staff using Bierley Marsh for access and parking. Similarly, for her to advise parents the same and police their activity, effectively stopping unauthorised usage and committing traffic offences. Can you also please advise what fines, etc are associated with committing a traffic offence."

Reply: -

"I've emailed the school and passed on your concerns. I'm afraid I do not know the level of fines that the Police hand out in situations like these, but the information may be on line."

Can you please comment on ownership of Bierley Marsh in the context of the Certificate B application and whether the developer has any title to the land?

I understand that on occasions land swap, of land fulfilling of equal value and next to criteria, can be used to allow construction on Common Land. Should this be a consideration in this matter I am not sure that the developer has such land to offer. To enable the school extension was at East Bierley First School a villager did offer appropriate land for a land swap to allow building work on the same common land. This villager informs me that this swap was not enacted, and proposed land now forms part of land in planning (2019/93616). The villagers of East Bierley Have already lost a considerable part of this common land already. **Given the intention of the Commons Act 206 is to maintain and enhance the counties stock of Common Land is there a higher threshold percentage for any area of Common Land that cannot be lost to activity that requires consent?**

Concerns over Road Adoption

Part of land required for the road adoption appears to be common land and will need consent under the Commons Act 2006 and involve advertisement and consultation, which has not taken place. Similarly, I believe assessment criteria for road adoption approval should include benefits to the community and impact on the landscape. I believe road adoption is not consistent with enjoyment of the remaining common. Associated points and concerns have been covered in the Examiner and T&A. I attach a copy of a letter that clearly states *"I refer to your letter 28 January and re-iterate that the Council has no proposal to adopt the street"*

Can you please advise the basis for any potential approval of this adoption proposal and the criteria which will be used for assessment of viability and benefits?

I and many others have submitted detailed objections on this matter, and I believe there will be significant issues and I raise the questions below:

- 1) **Can Bierley Marsh be partially adopted**, leaving an interface onto part of the footpath that has restrictions and that any vehicles continuing onto the unadopted footpath would be potentially a traffic offence.
- 2) **Does adoption require a threshold of housing units to be considered viable?**
- 3) **How would Kirklees assess if an adoption offered public benefit?**
- 4) **Should the whole of Bierley Marsh be considered for adoption** ie full 250m not just 45m
- 5) **How is it proposed to control traffic movements around Bierley Marsh**, Bierley Marsh is a horseshoe footpath, signed un-adopted, traffic can move in either direction and currently only serves access for 7 properties.
 - a. If Bierley Marsh is to be adopted, would one-way system be required through its total length, c. 250m?
 - b. If it were deemed a partial adoption of 45m could be managed, would this require gates or other control at interface as 1?
 - c. Bierley Marsh has many pinch points and appears for much of its length as a 10ft wide horseshoe footpath servicing residents access needs in a high amenity area.
- 6) **Will any partial road adoption set precedent**, The developers has told me he has plans to develop a larger field (3 times as big as current field subject to this planning application) and piggyback any approvals. Scale of

additional traffic resulting from this and the second field, c. 25m further down Bierley Marsh, if similar build density, will potentially result in total 24 new houses to Bierley Marsh, where currently there are only 7.

7) Can you please advise if road adoption is approved what remedies will be in place if the developer fails to meet standards required by planning consent? The developer's submission talks about doing road works to adoptable standards. He is not decisive saying the road will be adopted.

8) How will H&S risk from resulting additional cars be managed in an area where there is significant H&S risk to school children and attendees of the Dance school. The developer has also said it his intention to remove protective bollards, which have demarcation utility for school children and others using the Marsh. Proposed road works also compromise current disabled access to St Lukes.

9) How will economic loss be evaluated the developer's proposals take land identified as parking at St Lukes which is to be developed as Village Hall and provide facilities to improve the mental & physical health of children. Loss of parking is likely to affect owner's business plans and livelihood. Vibration from additional traffic and construction traffic adversely affecting St Luke's (built 1861) foundations, may results in further repairs being required.

10) How will loss of footpath utility be provided for the current footpath offers high amenity, a much more heavily trafficked road will impact this amenity as well as cause additional H&S risk, will the developer be required in his proposals to provide a like for like replacement for current footpath which potentially will result in further loss of common land.

11)

- a. construction of kerbing and transition from adopted road to
- b. The developers design does not respect the
- c. Closeness of the developers proposed access to town houses affects our
- d. The developers proposed access and parking
- e. The developer has intimated that he wants to remove protective barriers put in by Kirklees
- f. The developer has stated
We have
considerable traffic movements
seems to occupy land which is
- Plans show
and
, as well as in full
- g.
- h. Considerable vehicle movements associated with the site appear

- i. Turning circles for utility and emergency services are shown outside the site and encroach on common land
- j. There appears to be no provision for bins.

k.

- l. Flooding problems in surrounding gardens which are lower will be worsened by the proposed over developed site and hard surfaces.
- m. No consultation

Concerns about incorrect statements in the Developers Design Statement, general overdevelopment, issues with layout/orientation, parking and H&S issues.

(Possibly for a different discussion, but further to above, I have grave concerns over incorrect and misleading statements made in the developers design statement. Similarly, orientation of sections and 3D images do not I have also questioned traffic data used in the pre-survey and am awaiting response, potentially data from around 16th July 2018, if used, may be unsafe)

Can you please confirm dates for traffic survey data used in calculations/assessments?

It is mine and would appear, given many objections, others that there is no benefit to the villagers of East Bierley from the current plans and significant detriment to local amenity and affects enjoyment of common land the conservation area.

There is much public outcry about scale of development in the area, there must be 500 new houses in planning or being constructed within 2km of East Bierley, with 46 in planning 300m away from this site (ref. 2019/93616) there is no availability at East Bierley First School so this will mean additional traffic on roads for parents taking their children to other schools with capacity, increasingly this is less and less. The area is already busy with school drop off/pick up and in rush hour East Bierley is used as a rat run by drivers wishing to avoid traffic lights at Westgate Hill. The developers proposed layout would mean the site is overdeveloped, and the plans show considerable works outside the field boundary, I assume on land which he sees as having Ad medium filum rights over. Without a front on elevation of the planned works, from Bierley Marsh, it is hard to appreciate the full visual impact of the development, of densely built town houses with front parking, on the conservation area. It will look like a carpark and present visual clutter. His design is in no way sensitive to the local area.

The orientation of the town houses will lead to reversing manoeuvres and there would appear to be un-catered for parking needs within his design. With 3 and 4 bed family town houses and semis there could be in the order of 4 cars, vans, 4x4's, camper vans per house.

Reversing out onto pedestrians walking down Bierley Marsh, including many young children from the school will be inherently dangerous. The developer has said that there is spare parking in the area, this not the case school parking and nature of properties on South View Road is already a premium. Parking on nearby Sourbey Cross Way, is testament to this, with parking now in passing places and cutting up verges.

There appears to be no facility for bin collection and Turning circles within the site and the road layout that the developer shows encroaches on common land.

Precedence has already been set when planning was originally refused for a single property, to front of Cross House, applying for two cars to use Bierley Marsh.

Summary

I believe the proposed housing layout is too high density and the site will be overdeveloped, for its small area, works are outside field boundary, the developers plans affect land the developer may not have legal title over and encroach on common land, which may need consent.

I believe several matters would suggest that the developers design statement is misleading on overlooking, loss of privacy, nuisance and disturbance matters. I have proposed more sensitive development in line with the "Last Time Buy" initiative, which would provide opportunity for downsizing, free up existing family homes and would be potentially recession proof. A design on such principles, of say two bungalows, would give the developer his return.

I personally feel that the developer's road adoption proposal would circumvent the protection Bierley Marsh, a high amenity area offered by the current planning and access restrictions and that the developer will leverage any approvals to open the flood gates to substantially more development in the future. His proposals seem to not address recommendations and quotes in the Conservation Area Appraisal and referencing other Relevant Kirklees Policies:

Bierley Marsh "breaks up the domination of buildings in the Conservation Area and provides Quality Open Space". His development looks to present visual clutter.

Modern additions "has changed character of area and should be controlled in the future".

All development should "promote healthy environment, space, landscaping about buildings, avoidance of exposure to excessive noise or pollution" The developers design has car parking and access within 1.5m of our 3m wide rear lounge opening picture window as well as downstairs bathroom. Buildings are

he refers to in his own

design of space between town houses and semis.

I quite clearly object to the current layout and design of the development and any proposals that take common land.

--

Sun, 28
Jun,
19

Hi, I may have inadvertently been copied in your details, but it looks like you are dealing with issues I have. I apologise if this is not the case and would ask that you forward my email to the correct persons.

I understand that Owen Developments Ltd have applied for Section 38 Road Adoption of part of Bierley Marsh, East Bierley, associated with planning application 2020/90996. I am not fully aware of the Section 38 process, but I and many others have strongly objected to road adoption proposals, comments and objections have

been sent into the planning department, totally 76 in number many of which are objections.

The developer's road adoption proposals are seeking to circumvent the protection Bierley Marsh enjoys from the current planning and access restrictions. These limit any (total) development on a private access to five new properties and limit vehicular use to those with rights access to current properties. Noted that signage shows Bierley Marsh as unadopted and its horseshoe nature limits the need for anyone to drive on Bierley Marsh other than to access their current properties. If road adoption is approved the developer will leverage any approvals to open the flood gates to substantially more development in the future.

I have been told that the Developer knows the owner(s) of Bierley Marsh. I have asked for information on this but all I have been advised is that he has signed Certificate B. As part of research that I have done Savile and De Thornhill Estates, and the Coal Authority and they have no ownership interests in Bierley Marsh.

Kirklees have, Ad medium filum aside, stated in letters to me that they do not own Bierley Marsh and that they have no responsibility to maintain its full surface area. That said before the East Bierley First School extension, 2012/13 Kirklees undertook a complete resurfacing of Bierley Marsh. This work made existing boundaries less clear and tarmacked verge and possibly parts of Common Land.

As information has not been forthcoming on specific ownership matters, relating to Bierley Marsh, **I believe that the developer cannot prove his full ownership of land required for road adoption**, other than a small area at the frontage of the field in question, which he has prescriptive rights under Ad medium filum. (to projected boundaries) and St Luke's have significantly more prescriptive rights associated with Ad medium filum, over Bierley Marsh, as do Kirklees, see attached schematic. I will not dedicate this land we have rights over for road adoption. I am however fearful that Kirklees intend to sell and dispose of Common Land to the Developer. I feel that if Kirklees were to support such an initiative, leading to future land usage other than as a Common, and leading to further loss of Common Land, over and above that lost to the school extension, would not be in line with the aims of the Commons Act 2006. I believe road adoption would open the floodgates to much more development, would not be consistent with enjoyment of the remaining Common and in no way would enhance it as previously stated aims in the planning application for the school extension and contained within the Conservation Area Appraisal. Not being able to prove ownership will also make it difficult to bring utilities to the site.

At the time of the planning application for the East Bierley School extension, in 2012, comments were received (ref. UDP policy BE1, BE2(design) and BE5 (Conservation areas) and reiterated in the current Conservation Area Appraisal, referencing the need to conserve and enhance the historic environment (note a footpath on the line of current Bierley Marsh is likely to have been in existence for over 600yrs). Similar reference made to "Make a positive contribution to local character and distinctiveness. A road adoption would significantly detract from these aims.

I have now had it confirmed by Kirklees that the developer's road adoption proposal is showing encroachment on Common Land, to obtain stated/required road widths and turning circles. Should Kirklees sell Common Land to the developer, as well as reducing the country's stock of Common Land, the proposed road work will be within a conservation area, on land which is urban green space and recognised as a high amenity area with Green Flag status. Comment from Kirklees Legal section states *"The registration of the land as common land affect the use of the land and ability to develop it" and makes reference to "policy is not to allow our stock of common land and greens to diminish"*

The developer plans show removal of bollards to control parking and I have acted on numerous occasions to prevent Bierley Marsh becoming a highway. to request that teaching staff do not use Bierley Marsh and requested that letters be sent to parents advising the restrictions on Bierley Marsh, i.e. vehicular access for those with a "Right of Access" to their property. Related issues became much worse after the school extension was constructed in 2012/13. Noted that the Highways Safety Team in comment on the planning application 2012/48/90706 stated "Proposed school will cause significant congestion at drop off and pick up time", Parking generally is an issue and at a premium in East Bierley particularly around the school. I have challenged residents parking and have been given abuse. Road adoption will make parking worse as it takes land shown as parking, outside St Luke's, on plan within the Conservation Area Appraisal.

Points have been made around the position of the legal boundary of the Common Land and significant photographic evidence has already been submitted on this matter, which appears to have been accepted, as comments from Kirklees Registry, state "the legally registered Common Land extends further than the grassed area of the common. It would appear that the grass has receded over time and given way to the surfaced roadway, possibly due to vehicular parking in the vicinity"

To avoid any confusion, I request that the legal boundary is taken as shown on plans submitted by Kirklees for the school extension, supported by submitted photographic evidence. On these plans Bierley Marsh, up to its junction with South View Road, appears little more than a c.10ft track with verges. The developer is incorrectly assuming that the loose stoned up repaired area is outside Common Land. Bierley Marsh is a c. 10ft wide footpath servicing residents' access needs in a high amenity area. The proposed new development alone would result in more vehicle movements than current houses on Bierley Marsh create and would cause major concerns over the obvious H&S implications due to the interface with young school children and vehicles in the area.

Below are statements and questions submitted as part of the planning process. You may have seen these, but I include them in this email, as I would be grateful if you would comment appropriately. In addition, generally I would like to know:

- A) What is the basis of any assessment made by Kirklees of the resulting benefits to the amenity of the area from the road adoption proposal?

B) A copy of a letter from Kirklees has been submitted that clearly states “*I refer to your letter 28 January and re-iterate that the Council has no proposal to adopt the street*” What has changed?

Summary Questions and Statement made as planning objections

Comments are requested on:

- 1) Can Bierley Marsh be partially adopted, leaving an interface onto part of the existing footpath (with traffic restrictions) and that any vehicles continuing onto the unadopted footpath, would potentially be committing a traffic offence.
- 2) Should the whole of Bierley Marsh be considered for adoption i.e. full 250m not just 45m. What is the rationale for just 45m?
- 3) How is it proposed to control traffic movements around Bierley Marsh, a horseshoe footpath, signed un-adopted and where traffic can move in either direction and currently only serves access for 7 properties.
- 4) If Bierley Marsh is to be adopted, would a one-way system be required through its total length, c. 250m?
- 5) If it were deemed a partial adoption of 45m could be managed, would this require gates or other control at the interface as 1) above?
- 6) Bierley Marsh has many pinch points and appears for much of its length as a 10ft, without taking Common Land how the street can be made up to adoptable standards.
- 7) Will any partial road adoption be allowed to set precedent, it is common knowledge that the developer has plans to develop a larger field (3 times as big, c.11m away) and piggyback off any approvals? Granted under this application. Scale of additional traffic resulting from this development and the second field, if similar build density, will potentially result in a total 24 new houses to Bierley Marsh and potentially up to 60 additional cars. There is also concern that in the future a further third field to the eastern boundary of the bigger field will be linked.
- 8) What remedies will be in place if the developer fails to meet standards required by planning consent? The developer's submission talks about doing road works to adoptable standards. He is not decisive saying the road will be adopted. Similarly, him complying with requirements to gain consent for works on Common Land.
- 9) How will H&S risk and issues resulting from resulting additional cars be managed in an area where there is significant H&S risk to school children and attendees of the Dance school. The developer has also said it is his intention to remove protective bollards, which have demarcation utility for school children and others using the Marsh. Proposed road works also compromise

current disabled access to St Luke's. Layout and orientation of parking would potentially lead to inherently dangerous reversing into oncoming pedestrians

10) How will existing residents' parking be protected. Car parking provided is inadequate. (note only 2 per 4 bed houses shown, Kirklees guidance stipulates requirement for 3 parking places per 4 bed properties plus extra visitor parking). The developer has said that there is available car parking outside the site, in the area. This is not the case

11) How will economic loss be evaluated? The developer's proposals take land identified as parking at St Luke's which is to be developed as Village Hall and provide facilities to improve the mental & physical health of children. Loss of parking is likely to affect the owner's business plans and livelihood. Vibration from additional traffic and construction traffic adversely affecting St Luke's (built 1861) foundations, may result in further repairs being required. Similarly, excavation works for drainage may affect foundations and would certainly destroy the historic fabric of the ancient footpath, likely to be over 600yrs old.

12) How will loss of footpath utility be provided for, the current footpath offers high amenity, and historical heritage going back over 600yrs. A much more heavily trafficked road will impact this amenity as well as cause additional H&S risk, will the developer be required in his proposals to provide a like for like replacement for current footpath which potentially will result in further loss of common land.

Some of the points made below are not totally relevant to the question purely relating to road adoption. However, they do make relevant points on the detriment to be endured by the long-standing resident (31yrs) on Bierley Marsh, should a road adoption be approved. Matters below would not seem acceptable:

13) Construction of kerbing and transition from adopted road to footpath

14) The developers design does not respect the easements adjacent

15) The location of the developers proposed access to town houses affects , will lead to compromised visibility and cuts over land with Ad medium filum rights and will cause difficulties exiting drive.

16) The developer has intimated that he wants to remove protective bollards put in by Kirklees and use land previously improved with Ad medium filum rights (verge) used for parking.

17) Plans show considerable traffic movements in full view and seems to occupy land, which is the access to the drive, as well as in The developer

has stated
development to the North side.,

by the proposed

18) The developer has stated that an

possibly giving the Bierley Marsh,
of all vehicles. Considerable vehicle movements associated with the site
appear immediately , this will cause ongoing
disturbance from noise, car headlights and pollution.

19) Turning circles for utility and emergency services are shown outside the
site and encroach on common land. there is no containment
fence/was/hedge to the site.

20) There appears to be no provision for bins and there

I look forward to your response.

Mark/John, I was hoping for an update on the questions I raised in my email to you
on 28th June 20, as below. I have experienced some problems with emails to
Kirklees being blocked. Can you please acknowledge receipt of this email and my
email 28th June 20.

I am concerned that there are many issues with Owens Developments Ltd proposals
and with determination on the planning application 2020/90996 looming, I would
appreciate a response asap.

To:

- Louise Bearcroft;
- Rebecca Haigh;
- JohnM.Hinchliffe@kirklees.gov.uk;
- Mark.Berry@kirklees.gov.uk;
- Adrian Crowther;
- Giles Cheetham;
- Cllr Elizabeth Smaje

I refer to my previous emails, including 26th May 2020 and 28th June 2020,
comments and objections on matters relating to Kirklees's intentions towards
proposed Road Adoption and loss of Common Land as part above planning

application. In the absence, to date, of responses to my emails and now having gone through various Kirklees documents, I restate my questions and request for confirmation as to basis of any assessment made by Kirklees of the resulting benefits to the amenity of the area, including impact on East Bierley Conservation Area, the Urban Green Space UG291 and Common Land, from the Road Adoption proposal. The points made also follow on from matters raised in a recent Examiner article on moral responsibility not to enable further disposal of Common Land.

The Road Adoption proposal conflicts with objectives stated in **Kirklees Highways Guidance Note – Highways Adoption Criteria March 2019:**

Grounds for making decisions

8 Duty to Consider

- **Best Values.** Please explain Kirklees view on matters relating to economic, environmental, and social value associated with the road adoption proposal. Submissions have referred to economic loss at St Lukes Hall from removal of parking and the impact proposals would have on the social value, of a high amenity area, being compromised. The development is not constrained within the field boundary and sprawls out over the Conservation Area, detracting from visual amenity, contravening, Policy DPL 63 and PLP61, by impacting on key views from the Common. Similarly, environmental concerns have been expressed to Kirklees over the effect any excavation associated with the proposed development would have on roots of mature trees along the eastern boundary of the field and East Bierley Cenotaph, potentially affecting their stability and causing their destruction. These trees enhance the general setting of the Cenotaph and provide a suitable backdrop.
- **Equality.** Please explain Kirklees view on a Road Adoption proposal, if approved, causing discrimination by compromising a disabled access to St Luke's Hall.
- **Health and Safety.** What is Kirklees view on the additional Traffic associated with the development, far more than current traffic generated from 7 houses, putting at risk old people and children using Bierley Marsh for access to the Common and Duck Pond.
- **Road Network Management.** The document quotes "need to secure expeditious movement of traffic on the road network". Additional traffic generated, should the proposal be approved, would add to traffic issues and associated risks in an already dangerous area, at peak and school drop off/pick up times. Can you please advise on Kirklees position on the major concerns over additional Health and Safety risks associated with the proposal?

12 Design and construction

The developer does not have title to all land affected by road work proposals. Ad medium filum rights exist, and approval will not be given by

. The developer is therefore not able to construct works to an adoptable standard. Please confirm that Kirklees cannot approve road adoption if the developer does not have full title to land affected.

15 Partial adoption

Partial adoption, 45m of the 250m crescent, would create an unmanageable interface with a public footpath with traffic restrictions. How would Kirklees propose this interface be managed, if Adoption proposals were approved?

20 Paths which would not normally be adopted.

It is noted that Bierley Marsh is a public footpath, within the East Bierley Conservation Area, adjacent to UG291 and Common Land. Whilst providing a right of access for vehicles to 7 properties, Bierley Marsh has a principle function to allow people on foot to access and enjoy the high amenity area. Road adoption in no way enhances this utility. How are Kirklees supporting this loss of amenity should this road Adoption proposal be approved?

37 Visitor parking places

The design statement associated with this application is clear that visitor parking is not fully catered for and the allocated parking for 2 spaces per 4 bedroomed houses is far under Kirklees specified requirement to provide 3. Parking problems already exist in the area which will be worsened if the proposals, representing overdevelopment of the site (in the context of setting and local grain), are approved and constructed. Kirklees Guidance specifically warns about the likely need for suitable arrangements to be made to ensure parking is managed and maintained. What actions would Kirklees take in such circumstances?

Further questions below relate to **Highways Guidance Note – introduction to Highways and adoption March 2019:**

3 Meaning of Highway

It is noted that part of Bierley Marsh is a highway, SPE/6 (as cl26, to be Old Highways – any path that has existed since 16 December 1949) and has restrictions as stated within the Definitive plan.

The Pre Planning enquiry submitted by Quod 14/0/19 specifically states that "it is not proposed to promote the road for adoption". Kirklees correspondence has also stated that Kirklees has no intention to adopt Bierley Marsh. What has changed?

As a general principle it would appear that parts of Bierley Marsh, defined as public footpath, would be affected by the road adoption proposal and to maintain the utility of the footpath, would require a diversion order and Secretary of State for Transport approval. Is this the case?

21 Dedication and Acceptance

As 3 above it would appear that there is no need to dedicate land as Highway. In any event confirm that they have no intention of dedicating

It has also been advised have continuously objected from 1991 to use of Bierley Marsh by vehicles with no right of access. The main issue being school traffic using Bierley Marsh as a turning circle, for drop off and school staff parking. This made worse when Kirklees extended East Bierley First School. Kirklees have been contacted on these matters and representation made to former school head, Mr Newby and more latterly the new head, via a Kirklees

communication most recently in Feb 2020. The nature of Bierley Marsh, a horseshoe track and signage as unadopted also does not support usage by vehicles other than access to the 7 existing properties.

It is understood that Kirklees can not approve road adoption when the developer can not show full title over land affected. Is this the case?

41 Section 228 Notices

. I understand that Kirklees can post notices under section 228 of the Highways Act 1980 saying that it intends to take on the road as publicly maintainable highways. Please advise if Kirklees intend to serve section 228 notices?

Please take this email as an objection if this were to happen.

Road adoption proposal encroaching on common land.

Representation on grounds of "moral agency" has been made to Kirklees legal on this matter as I am aware that Kirklees may be considering sale of "a slither" Common Land to the developer to enable his road proposals. I believe Kirklees have enabled deregistration of Common Land to build the extension of East Bierley first school and that this contravenes restrictive covenants relating to the common land as the title document clearly states. Also, required land swap required with deregistration and consent under the Commons Act 2006, appears not to have been enacted. The villagers and visitors to the Conservation Area and Urban Green Space at East Bierley should not be subjected to further loss of Common land.

Please confirm your intentions on this matter in particular explain how Common Land was previously deregistered to allow East Bierley School extension and how further common land would be deregistered to allow a road adoption proposal, where Restrictive Covenants associated with WYK813938, clearly state "no building or buildings shall at any time hereafter be erected"

It is clear that Road adoption would allow the developer to circumvent the planning protection that Bierley Marsh enjoys; restricting development to 5 houses (off a private access) and maintaining control over future traffic levels, with no benefits to the wider amenity, community and local residents or visitors to the area.

Approval of this planning application and Road Adoption would be a travesty. If Kirklees do decide to approve Road Adoption (and can legally do so) I request that assurance is given that no development of land takes place without consent under s.38, and that in the absence of consent, Kirklees will take enforcement action, resorting to s.41 if necessary.

On a final point it has been drawn to my attention that the planning sub-committee that covers East Bierley may not actually be currently meeting. Can you please confirm that this application will be reviewed at the planning committee.

I apologise for repeating some points but this email is borne out of frustration out of lack of response to questions raised some time ago. Your timely response would be much appreciated. If anyone wishes to ring me on these matters, my mobile number is provided below.

From:

Sent: 07 July 2020 06:45

To: Rebecca Haigh <Rebecca.Haigh@kirklees.gov.uk>; Cllr Elizabeth Smaje <Elizabeth.Smaje@kirklees.gov.uk>

Subject: Fwd: Common Land East Bierley - Title WYK813938

Rebecca, I was hoping for an update on the questions I raised in my email to you on 28th June 20, as below. I note that the email was blocked from . Can you please acknowledge receipt of this email and my email 28th June 20.

I am advised by the Open Spaces Society (OSS) that there is no record of Common Land (as footprint of East Bierley School Extension) being deregistered in 2012. Can you please advise the process followed by Kirklees and timing when Common Land was deregistered from the red line area shown on title document WYK813938. Area subject to deregistration inline with the plan you included in your email of 15th June 10.59 on this matter, which I was forwarded copy.

Your comment also noted "Where the land to be deregistered is over 200 square meters any application must propose replacement land to be registered in place of the land to be released. Defra's 'Common Land Consents Policy Guidance' States: *'Even if the land to be deregistered is not more than 200m² the Secretary of State will usually expect land to be offered in exchange for the land being deregistered as her policy is not to allow our stock of common land and greens to diminish. The Secretary of State does not interpret the purpose of section 16 as being to facilitate the deregistration of 'unwanted' or 'useless' pieces of common land or green; but to enable registered land to be released in exchange for replacement land of equal value.'*"

I accept your comment that Kirklees can sell Common Land but I ask you to consider a moral position, regarding sanctioning loss of further Common Land, if Common Land has already been lost as above.

OSS also advise, "ask the council to give an assurance that, if it does dispose of the land, it agrees to ensure that no development of the land takes place without consent under s.38 — and that in the absence of consent, it will take enforcement action (resorting to s.41 if necessary)". If, contrary to the moral position against, Kirklees sell Common Land, I formally request this becomes a condition of sale.

As a determination on planning application 2020/90996 is looming, I would appreciate a response this week on these matters.

----- Forwarded message -----

From:

Date: Sun, 28 Jun 2020 at 11:50

Subject: Common Land East Bierley - Title WYK813938

To: <Rebecca.Haigh@kirklees.gov.uk>, <Conninne.Wilson@kirklees.gov.uk>

Hi, I may have inadvertently been copied in your details, but it looks like you are dealing with issues I have. I apologise if this is not the case and would ask that you forward my email to the correct persons.

I have been forwarded a plan, attached, which I understand you provided to a colleague, in order for him to respond to questions that I had asked in relation to building the extension to East Bierley First School and land boundaries generally. The plan has sparked some questions as it does not tie in with the boundaries shown on the Title Registry plan for the Common Land at East Bierley, adjacent to Bierley Marsh. Title plan to which I refer is contained in the Title document ref. WYK813938, attached, which also contains a schedule of restrictive covenants.

If your plan is correct c. 210 sqm of Common Land would appear to have been deregistered.

Can you please advise the processes Kirklees followed and approvals gained, in the context of deregistering common land, as your plan would suggest?

Common understanding in the village, at the time of the school extension, was that a villager offered appropriate land as a "land swap", which I understand is acceptable to the Secretary of State, under the Commons Act 2006, for him to consent to deregistration of common land. I have spoken with the villager recently who confirmed that he had offered land adjacent to Common Land to enable the School extension, but confirmed that Kirklees never followed up on his offer and that the land swap was never enacted.

Please can you comment on the legal position relating to loss of Common Land, if above is the case.

Whilst I have not yet taken my own legal advice on the above matter, I have taken legal advice regarding encroachment on Common Land by a road adoption proposal linked with planning application 2020/90996. I also believe that the developer cannot prove ownership over large parts of land on which his road adoption proposal affects.

I have engaged with the Open Space Society (OSS) and local press for support and I am in dialog with your colleagues in other departments on Ad medium filum matters relating to other parts of Bierley Marsh. **I am totally against a road adoption proposal and any action taken to enable it.** Your plan and comments from your Kirklees colleagues have confirmed, if constructed, the road adoption works will need to take Common Land.

The road adoption proposal, if approved, would circumvent the current protection this high amenity area has in relation to limitation on development and access in line with restrictions associated with public footpath SPE/6/20. It would open the floodgates for further development, which if the current plans are anything to go by, would be totally out of character with the location and would detract from this high amenity and historic area.

Should Kirklees wish to sell or dispose of further Common Land, to possibly enable the developer to construct his road proposal, I believe such an action would not be supportive of the aims of the Commons Act 2006. The Commons act 2006 clearly has a remit to conserve and enhance the country's stock of common land and "policy is not to allow our stock of common land and greens to diminish". Kirklees actions, if they propose to sell/dispose of Common Land, **knowingly** for use other than a Common, would be to the contrary to and in no way supportive to the aims of the Commons Act 2006.

On to another point I also request your opinion. I believe the descriptive text contained with the attached Title Documentation, WYK813938, gives the land in question **Green** status as well as Common Land. I am being advised "**my interpretation of the covenant is possibly not entirely correct**"

Can you please advise what I am misinterpreting in relation to the text below which seems very specific and refers to a standalone area of land described as:

"The Freehold land shown edged with red on the plan of the above title filed at the Registry and being land on the south and north east of East Bierley Church Of England First School, South View Road, East Bierley, Bradford"

and stating in the Schedule of Restrictive Covenants

*"The following are details of the stipulation and covenants contained in the Conveyance dated 31 December 1934 referred to in the Charges Register:- "To the intent that such part of the lands hereby conveyed as is known as "The Green" (hereinafter called "The Green") and is situate in or near to Hunsworth Lane and Bierley Marsh **shall continue to be appropriated and laid out as now as a Green** And the Purchasers (so as to bind as far as possible the Purchasers and all persons who shall hereafter become entitled to any estate or interest in The Green or any part or parts thereof and so that this covenant shall be for the benefit of the property adjoining The Green and particularly the property known as The United Methodist Church and Sunday School and so far as may be the public of Hunsworth and district) hereby covenant with the Vendor that (unless with the written consent of the Vendor during his life) no building or buildings shall at any time hereafter be erected on The Green nor shall it be appropriated or used as an Omnibus Stand or for any purpose other than in accordance with the foregoing intent and covenant And also that The Green shall at all times hereafter be maintained and preserved in good order and condition"*

It appears to me that the Title Document, WYK813938, is an "entire document" and I don't understand why I am being advised that statements made in it refer to other

areas of land not included in this Title. Restrictive covenants as above pass on through any sale of land.

I would be grateful if you would also clarify this matter.

Common Land East Bierley - Title WYK813938

- Rebecca.Haigh@kirklees.gov.uk <Rebecca.Haigh@kirklees.gov.uk>;
- Cllr Elizabeth Smaje <Elizabeth.Smaje@kirklees.gov.uk>

2 attachments (186 KB)

RegisterPlanWYK813938.pdf; common.jpg;

Rebecca, I was hoping for an update on the questions I raised in my email to you on 28th June 20, as below. I note that the email was blocked from Conninne Wilson. Can you please acknowledge receipt of this email and my email 28th June 20.

I am advised by the Open Spaces Society (OSS) that there is no record of Common Land (as footprint of East Bierley School Extension) being deregistered in 2012. Can you please advise the process followed by Kirklees and timing when Common Land was deregistered from the red line area shown on title document WYK813938. Area subject to deregistration inline with the plan you included in your email of 15th June 10.59 on this matter, which I was forwarded copy.

Your comment also noted "Where the land to be deregistered is over 200 square meters any application must propose replacement land to be registered in place of the land to be released. Defra's 'Common Land Consents Policy Guidance' States: *'Even if the land to be deregistered is not more than 200m² the Secretary of State will usually expect land to be offered in exchange for the land being deregistered as her policy is not to allow our stock of common land and greens to diminish. The Secretary of State does not interpret the purpose of section 16 as being to facilitate the deregistration of 'unwanted' or 'useless' pieces of common land or green; but to enable registered land to be released in exchange for replacement land of equal value.'*"

I accept your comment that Kirklees can sell Common Land but I ask you to consider a moral position, regarding sanctioning loss of further Common Land, if Common Land has already been lost as above.

OSS also advise, "ask the council to give an assurance that, if it does dispose of the land, it agrees to ensure that no development of the land takes place without consent

under s.38 — and that in the absence of consent, it will take enforcement action (resorting to s.41 if necessary)". If, contrary to the moral position against, Kirklees sell Common Land, I formally request this becomes a condition of sale.

As a determination on planning application 2020/90996 is looming, I would appreciate a response this week on these matters.

----- Forwarded message -----

From

Date: Sun, 28 Jun 2020 at 11:50

Subject: Common Land East Bierley - Title WYK813938

To: <Rebecca.Haigh@kirklees.gov.uk>, <Conninne.Wilson@kirklees.gov.uk>

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I would be grateful if you would also clarify this matter.

Planning 2020/90996 - Potential Sale of slither of Common Land off Bierley

Marsh

To:

- Rebecca Haigh;
- Cllr Elizabeth Smaje;
- Adrian Crowther;
- mark.thompson@kirklees.gov.uk

Rebecca/Adrian, further to my previous emails re. above. I note that I have been copied in on emails that suggest that Kirklees are considering selling a slither of common land to Owen Developments Ltd., on the west side of Bierley Marsh, f

This area of Common land has been repaired with loose stone.

I am not sure if you are the correct persons to lodge my interest, as below, if you are not, can you please forward to the appropriate officer.

I also wish to purchase said Common Land and request that you advise the process Kirklees would adopt for such a disposal, if that is what Kirklees are intending to do.

I assume there will be a tender process for a sale. Can you please forward appropriate documents that Kirklees would use, in the case of an intended sale, to enable the sale to complete and advise time scales and the mechanics of the actual bidding process.

I look forward to a timely response on this matter.

**Bierley Marsh East Bierley, planning application 2020/90996 - Developers
Proposed Road Adoption.**

To:

- Mark.Berry@kirklees.gov.uk;
- JohnM.Hinchliffe@kirklees.gov.uk

Cc:

-
- Cllr Elizabeth Smaje;
- Louise Bearcroft;
- Ian Watson

Hi, I may have inadvertently been copied in your details, but it looks like you are dealing with issues I have. I apologise if this is not the case and would ask that you forward my email to the correct persons.

I understand that Owen Developments Ltd have applied for Section 38 Road Adoption of part of Bierley Marsh, East Bierley, associated with planning application 2020/90996. I am not fully aware of the Section 38 process, but I and many others have strongly objected to road adoption proposals, comments and objections have been sent into the planning department, totally 76 in number many of which are objections.

The developer's road adoption proposals are seeking to circumvent the protection Bierley Marsh enjoys from the current planning and access restrictions. These limit any (total) development on a private access to five new properties and limit vehicular use to those with rights access to current properties. Noted that signage shows Bierley Marsh as unadopted and its horseshoe nature limits the need for anyone to drive on Bierley Marsh other than to access their current properties. If road adoption is approved the developer will leverage any approvals to open the flood gates to substantially more development in the future.

I have been told that the Developer knows the owner(s) of Bierley Marsh. I have asked for information on this but all I have been advised is that he has signed Certificate B. As part of research that I have done Savile and De Thornhill Estates, and the Coal Authority and they have no ownership interests in Bierley Marsh.

Kirklees have, Ad medium filum aside, stated in letters to me that they do not own Bierley Marsh and that they have no responsibility to maintain its full surface area. That said before the East Bierley First School extension, 2012/13 Kirklees undertook a complete resurfacing of Bierley Marsh. This work made exciting boundaries less clear and tarmacked verge and possibly parts of Common Land.

As information has not been forthcoming on specific ownership matters, relating to Bierley Marsh, **I believe that the developer cannot prove his full ownership of land required for road adoption**, other than a small area at the frontage of the field in question, which he has prescriptive rights under Ad medium filum.

significantly more prescriptive rights associated with Ad medium filum, over Bierley Marsh, as do Kirklees, see attached schematic.

I am however fearful that Kirklees intend to sell and dispose of Common Land to the Developer. I feel that if Kirklees were to support such an initiative, leading to future land usage other than as a Common, and leading to further loss of Common Land, over and above that lost to the school extension, would not be in line with the aims of the Commons Act 2006. I believe road adoption would open the floodgates to much more development, would not be consistent with enjoyment of the remaining Common and in no way would enhance it as previous stated aims in the planning application for the school extension and contained within the Conservation Area Appraisal. not being able to prove ownership will also make it difficult to bring utilities to the site.

At the time of the planning application for the East Bierley School extension, in 2012, comments were received (ref. UDP policy BE1, BE2(design) and BE5 (Conservation areas) and reiterated in the current Conservation Area Appraisal, referencing the need to conserve and enhance the historic environment (note a footpath on the line of current Bierley Marsh is likely to have been in existence for over 600yrs). Similar reference made to "Make a positive contribution to local character and distinctiveness. A road adoption would significantly detract from these aims.

I have now had it confirmed by Kirklees that the developer's road adoption proposal is showing encroachment on Common Land, to obtain stated/required road widths and turning circles. Should Kirklees sell Common Land to the developer, as well as reducing the country's stock of Common Land, the proposed road work will be within a conservation area, on land which is urban green space and recognised as a high amenity area with Green Flag status. Comment from Kirklees Legal section states *"The registration of the land as common land affect the use of the land and ability to develop it" and makes reference to "policy is not to allow our stock of common land and greens to diminish"*

The developer plans show removal of bollards which Kirklees to prevent Bierley Marsh becoming a highway. , to request that teaching staff do not use Bierley Marsh and requested that letters be sent to parents advising the restrictions on Bierley Marsh, i.e. vehicular access for those with a "Right of Access" to their property. Related issues became much worse after the school extension was constructed in 2012/13. Noted that the Highways Safety Team in comment on the planning application 2012/48/90706 stated "Proposed school will cause significant congestion at drop off and pick up time", without my prompting little is done to assist residents on this matter. Parking generally is an issue and at a premium in East Bierley particularly around the school. Road adoption will make parking worse as it takes land shown as parking, outside St Luke's, on plan within the Conservation Area Appraisal.

Points have been made around the position of the legal boundary of the Common Land and significant photographic evidence has already been submitted on this matter, which appears to have been accepted, as comments from Kirklees Registry, state "the legally registered Common Land extends further than the grassed area of the common. It would appear that the grass has receded over time and given way to the surfaced roadway, possibly due to vehicular parking in the vicinity"

To avoid any confusion, I request that the legal boundary is taken as shown on plans submitted by Kirklees for the school extension, supported by submitted photographic evidence. On these plans Bierley Marsh, up to its junction with South View Road, appears little more than a c.10ft track with verges. The developer is incorrectly assuming that the loose stoned up repaired area is outside Common Land. Bierley Marsh is a c. 10ft wide footpath servicing residents' access needs in a high amenity area. The proposed new development alone would result in more vehicle movements than current houses on Bierley Marsh create and would cause major concerns over the obvious H&S implications due to the interface with young school children and vehicles in the area.

Below are statements and questions submitted as part of the planning process. You may have seen these, but I include them in this email, as I would be grateful if you would comment appropriately. In addition, generally I would like to know:

- A) What is the basis of any assessment made by Kirklees of the resulting benefits to the amenity of the area from the road adoption proposal?
- B) A copy of a letter from Kirklees has been submitted that clearly states *"I refer to your letter 28 January and re-iterate that the Council has no proposal to adopt the street"* What has changed?

Summary Questions and Statement made as planning objections

Comments are requested on:

- 1) Can Bierley Marsh be partially adopted, leaving an interface onto part of the existing footpath (with traffic restrictions) and that any vehicles continuing onto the unadopted footpath, would potentially be committing a traffic offence.
- 2) Should the whole of Bierley Marsh be considered for adoption i.e. full 250m not just 45m. What is the rationale for just 45m?
- 3) How is it proposed to control traffic movements around Bierley Marsh, a horseshoe footpath, signed un-adopted and where traffic can move in either direction and currently only serves access for 7 properties.
- 4) If Bierley Marsh is to be adopted, would a one-way system be required through its total length, c. 250m?
- 5) If it were deemed a partial adoption of 45m could be managed, would this require gates or other control at the interface as 1) above?

6) Bierley Marsh has many pinch points and appears for much of its length as a 10ft, without taking Common Land how the street can be made up to adoptable standards.

7) Will any partial road adoption be allowed to set precedent, it is common knowledge that the developer has plans to develop a larger field (3 times as big, c.11m away) and piggyback off any approvals? Granted under this application. Scale of additional traffic resulting from this development and the second field, if similar build density, will potentially result in a total 24 new houses to Bierley Marsh and potentially up to 60 additional cars. There is also concern that in the future a further third field to the eastern boundary of the bigger field will be linked.

8) What remedies will be in place if the developer fails to meet standards required by planning consent? The developer's submission talks about doing road works to adoptable standards. He is not decisive saying the road will be adopted. Similarly, him complying with requirements to gain consent for works on Common Land.

9) How will H&S risk and issues resulting from resulting additional cars be managed in an area where there is significant H&S risk to school children and attendees of the Dance school. The developer has also said it is his intention to remove protective bollards, which have demarcation utility for school children and others using the Marsh. Proposed road works also compromise current disabled access to St Luke's. Layout and orientation of parking would potentially lead to inherently dangerous reversing into oncoming pedestrians

10) How will existing residents' parking be protected. Car parking provided is inadequate. (note only 2 per 4 bed houses shown, Kirklees guidance stipulates requirement for 3 parking places per 4 bed properties plus extra visitor parking). The developer has said that there is available car parking outside the site, in the area. This is not the case

11) How will economic loss be evaluated? The developer's proposals take land identified as parking at St Luke's which is to be developed as Village Hall and provide facilities to improve the mental & physical health of children. Loss of parking is likely to affect the owner's business plans and livelihood. Vibration from additional traffic and construction traffic adversely affecting St Luke's (built 1861) foundations, may result in further repairs being required. Similarly, excavation works for drainage may affect foundations and would certainly destroy the historic fabric of the ancient footpath, likely to be over 600yrs old.

12) How will loss of footpath utility be provided for, the current footpath offers high amenity, and historical heritage going back over 600yrs. A much more heavily trafficked road will impact this amenity as well as cause additional H&S risk, will the developer be required in his proposals to provide a like for like replacement for current footpath which potentially will result in further loss of common land.

Some of the points made below are not totally relevant to the question purely relating to road adoption. However, they do make relevant points on the detriment to be endured by the long-standing resident (31yrs) on Bierley Marsh, should a road adoption be approved. Matters below would not seem acceptable:

13) Construction of kerbing and transition from adopted road to footpath appears to restrict/affect access at adjacent property

14) The developers design does not respect the easements adjacent properties have for maintenance work on walls.

15) The location of the developers proposed access to town houses affects existing property access, will lead to compromised visibility and cuts over land with Ad medium filum rights and will cause difficulties exiting drive.

16) The developer has intimated that he wants to remove protective bollards

17) Plans show considerable traffic movements in full view of

18) The developer has stated that

overlooking Bierley Marsh, possibly giving the impression the kitchen window will be shielded from sight of all vehicles. Considerable vehicle movements associated with the site appear immediately outside adjacent property, this will cause ongoing disturbance from noise, car headlights and pollution.

19) Turning circles for utility and emergency services are shown outside the site and encroach on common land. there is no containment fence/was/hedge to the site.

20) There appears to be no provision for bins and there will be the risk that bins are left in front of adjacent property.

I look forward to your response.

From:
To: [DCAdmin](#)
Subject: FW: 2020/90966
Date: 19 August 2020 14:05:50
Attachments: [XFinal summary](#) [to 2020-90996.pdf](#)

Hello,

Please can you index the attached document as a representation to 2020/90996.

Thanks,

From:
Sent: 05 August 2020 14:02
To: Louise Bearcroft <Louise.Bearcroft@kirklees.gov.uk>; Cllr Elizabeth Smaje
<Elizabeth.Smaje@kirklees.gov.uk>
Subject: 2020/90966

further to your email last Thursday 30th July 20 please see attached document.

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