Kirklees Council

Planning and Development

Civic Centre 3

PO Box B93

Huddersfield

HD1 2JR

Thornfield, Bierley Marsh

East Bierley

Bradford

BD4 6PL

12/12/24

FAO Elenya Jackson

Re: Objection to the proposed varied plans, as application 2024/70/93227/E, on the grounds of matters relating to common land, the historic use of the field (subject to planning), and supporting evidence as old images.

I object to application 2024/70/93227/E on the following grounds:

Inconsistency with Original Permission:

The proposed varied layout plan is inconsistent with the original permission and fundamentally alters the nature of the approved development by encroaching on common land, which was not part of the original permission. This creates a conflict with the operative wording of the existing planning permission, which explicitly did not include any development on common land.

Scope of Section 73:

The proposed encroachment represents a substantial alteration to the approved scheme, going beyond the scope of what Section 73 is intended to address.

Protection of Common Land:

Common land is protected under the Commons Act 2006 against encroachment and unauthorised development.

The proposed variation would require separate consent under Section 38 of the Commons Act 2006 for any hard surfacing works on common land, **which has not been obtained**.

Enforcement action under Section 41 of the Act may be taken if work begins without consent.

Below is an extract from the Common land Registration Plan CL 222, held by Kirklees, which shows the definitive record of boundaries:

The plan defines the width of Bierley Marsh as no more than 3.25m wide, shown of constant width, is horseshoe shaped in nature, runs around the duckpond and is within the Conservation Area. The plan also shows unregistered and private verges, to the east of Bierley Marsh.

The work East Bierley Village Preservation Society (EBVPS) have done to repair parts of the Common, which were damaged, see below, by creating stoned up parking bays, and placing set back bollards, has no impact on the above definitive boundary.

Parking bays do appear illegal under the Law of Property Act 1925 and the Road Traffic Act 1988 makes it illegal drive on common land, except within 15yds of the public highway.

I have asked Kirklees and EBVPS numerous times for the parking bays be removed and bollards placed at the legal boundary of the Common and Bierley Marsh.

It would appear also that a small area of Common has been tarmacked without consent.

Bierley Marsh and Public Footpath SPEN 6-30

Kirklees has confirmed that Bierley Marsh carries a public footpath SPEN 6-30/20, has no parking rights and that parking is illegal on the Common, except within 15 yards of the public highway.

Legal Framework for Common Land Development

A clear legal framework exists under Section 16 of the Commons Act, requiring replacement land when development or encroachment occurs on existing common land.

Kirklees has previously set a precedent for this requirement, as seen by amendments made to the Official Common Land Registration documents, held by Kirklees:

2 — 25th February 1971 — The registration at entry No. 1 above, being undisputed, became final on 1st October, 1970.

3 — 15 February 1992. — Registration Amendment: The part of the land comprised in this Register Unit shown edged red on the plan attached to a Deed of Exchange sanctioned by the Sec of State for the Environment on the 20th February 1992 ceased to be Common Land on the 20th February 1992 and is removed from the register pursuant to the application by Kirklees Met. Council. [See File 412]

4 — 15 Feb 1992. — The land comprised in the Deed of Exchange dated 20/2/92 and edged green became Common Land in substitution for the land removed the register at entry No.3 above by virtue of the said Deed of Exchange. and became on the 20/2/92 subject to the rights of Common (if any) which were exercisable over the said removed Land. [See file 412]

5 — 28 January 2019 — 198 square metres of land immediately adjacent East Bierley C of E School on South View Road, East Bierley appropriated for the school extension in 2012 under Section 122 of the Local Government Act 1972 (See file 412)

As part of any application the developer makes to Kirklees, to acquire any common land, to support his proposals, he (Kirklees) will need to identify and provide replacement land of no less, amenity value and quality.

Restrictive Covenant

The proposed access road over Common CL222 would violate a restrictive covenant recorded on the Registry documents for land owned by Kirklees (WWK813938).

This covenant can be enforced through legal action by any party, potentially requiring removal of unauthorised construction.

Historic Field Access

Since my wife and I bought Thornfield in 1989, and up to the death of , in 2018, the field, subject to planning, had only ever been accessed on foot and tended by hand. Previously, the field had been nurseries:

The small gate was replaced by a larger steel gate, soon after death.

The above hedge has been obliterated by actions sanctioned by previous owners which has led to fly tipping waste including rocks and tarmac on the verge to the west of the field.

Vehicular Access Rights

The field subject to planning appears to lack established vehicular access rights:

No rights are stipulated in the deeds.

The case law of Parker v Roberts suggests that any existing rights associated with Whinfield Nurseries cannot be assumed to extend to a separate plot.

No right has been established through Prescription (or by Necessity) as the field has historically only been accessed on foot.

The Natural Environment and Rural Communities (NERC) Act 2006, Sections 66 and 67, prevents the creation of new public rights of way for motor vehicles and extinguished existing unrecorded rights.

Kirklees written to me, in the context of Bierley Marsh, stating:

“It is likely that the street was originally formed, or evolved as, an access to property, rather than being “constructed”,

Given the above issues and legal considerations, it is requested that this application be refused.

I ask that you please confirm that you have received this letter and that you will officially record my comments on the Kirklees Planning Portal, as an objection to application 2024/70/93227/E.

Yours sincerely

Cc Enforcement, DC.Admin, Chris Read, Kevin Walton