

Sent: 08 May 2025 17:24

Subject: Comments from KC PROW - 2025/91001 and 2024/93227

Comments from Kirklees Council PROW Team

2025/44/91001/E

Land at, St Luke's, Bierley Marsh, East Bierley, BD4 6PL

Discharge of details reserved by condition 5 (access re-surface) on previous permission 2020/94345 (APP/Z4718/W/21/3289729) for erection of 5 dwellings

Also 2024/93227 - *Land at, St Luke's, Bierley Marsh, East Bierley, BD4 6PL (Variation condition 2 (plans) on previous permission 2020/94345 (APP/Z4718/W/21/3289729) for erection of 5 dwellings).*

KC PROW appears to have been consulted regarding 2024/93227 in January 2025. No comment was made at that time due to lack of detail on in the documents submitted and in light of comments already made by HDM. However additional plans have now been submitted showing details of the repositioning and proposed resurfacing of the access Road (Bierley Marsh). Comments are now made made follow submission of additional drawings and submission of the same drawings with 2025/44/91001/E. The comments below apply to both applications.

Public footpath SPE/6/20 runs along the access road (part of Bierley Marsh) that will serve the development. In addition to carrying a public footpath the road currently provides vehicular access to various existing properties. The existing access road along which FP SPE/6/20 runs currently has a sealed surface. KC PROW does not object to the resurfacing of SPE/6/20 in the manner shown on drawings 104 F, MCB/24/018/0701 and MCB/24/018/0201. However, for the benefit of the applicant, other landowners who take access over Bierley Marsh, and officers in other teams, the following additional observations are made regarding the widening / resurfacing of Bierley Marsh.

Footpath SPE/6/20 abuts East Bierley Village Green. That is registered common land forming part of CL222 (Toftshaw Moor). The common land is subject to a public right of air and exercise under s193 Law of Property Act 1925. The land is owned by Kirklees Council having been conveyed to a predecessor authority in 1934 for use as a 'green'. The land is vested with Parks & Greenspace. The registered common land does not appear to included public footpath SPE/6/20, or have historically included the land on which the original access road ran (barring any presumed sub soil ownership to the centre line of the way). The land provided for the use as a 'green' may also be subject to restrictive covenants regarding its use.

Over time a strip of land on the east side of the common land, where it abuts the west side of SP/6/20, had become used informally for the parking of vehicles. At some point this strip has been resurfaced with asphalt and / or gravel. Posts were erected on the grass to prevent further encroachment by vehicles on to the village green. The current proposal shown in drawing MCB/24/018/0701 and other drawings includes proposed resurfacing, for use as part of the access road to previous approved development (2020/94345), of the strip of Kirklees-owned common land as far west as the existing line of posts. Consent from the vesting service would likely be required for any works, also in respect of the granting of an easement.

The consent of the Secretary of State may be required, under section 38 of the Commons Act 2006, to carry out works including resurfacing of part of the common land. If appropriate the owner of the land may make an application to the Secretary of State for deregistration / exchange of common land.

It is also generally a criminal offence under s34 Road Traffic Act 1988, if a person without lawful authority drives a mechanically propelled vehicle on to or upon any common land, moorland or land of any other

description, not being land forming part of a road, or on any road being a footpath, bridleway or restricted byway. (It is not an offence under that section to drive a mechanically propelled vehicle on any land within fifteen yards of a road, being a road on which a motor vehicle may lawfully be driven, for the purpose only of parking the vehicle on that land).

Matters relating to private access rights, landowner consent, and consent from the Secretary of State in respect of common land, are all matters for the developer to address but which fall outside the planning application process.

Regards

Phil Champion

Definitive Map Officer
Public Rights of Way
Kirklees Council