

06 August 2026

For the attention of: Elenya Jackson, Case Officer

Planning and Development Service
Kirklees Metropolitan Borough Council
PO Box 1720, Huddersfield, HD1 9EL

Sent via email: Elenya.jackson@kirklees.gov.uk ; dc.admin@kirklees.gov.uk ;
CC mathias.franklin@kirklees.gov.uk

**RE: PLANNING APPLICATION 2026/91923. LAND TO THE REAR OF ST LUKE'S,
BIERLEY MARSH, EAST BIERLEY, BD4 6PL - CHALLENGE TO VALIDITY OF
SUBMITTED CERTIFICATE OF OWNERSHIP (CERTIFICATE A), INCORRECT LAND
CATEGORISATION, AND PROCEDURAL BAR TO DETERMINATION**

Dear Ms Jackson

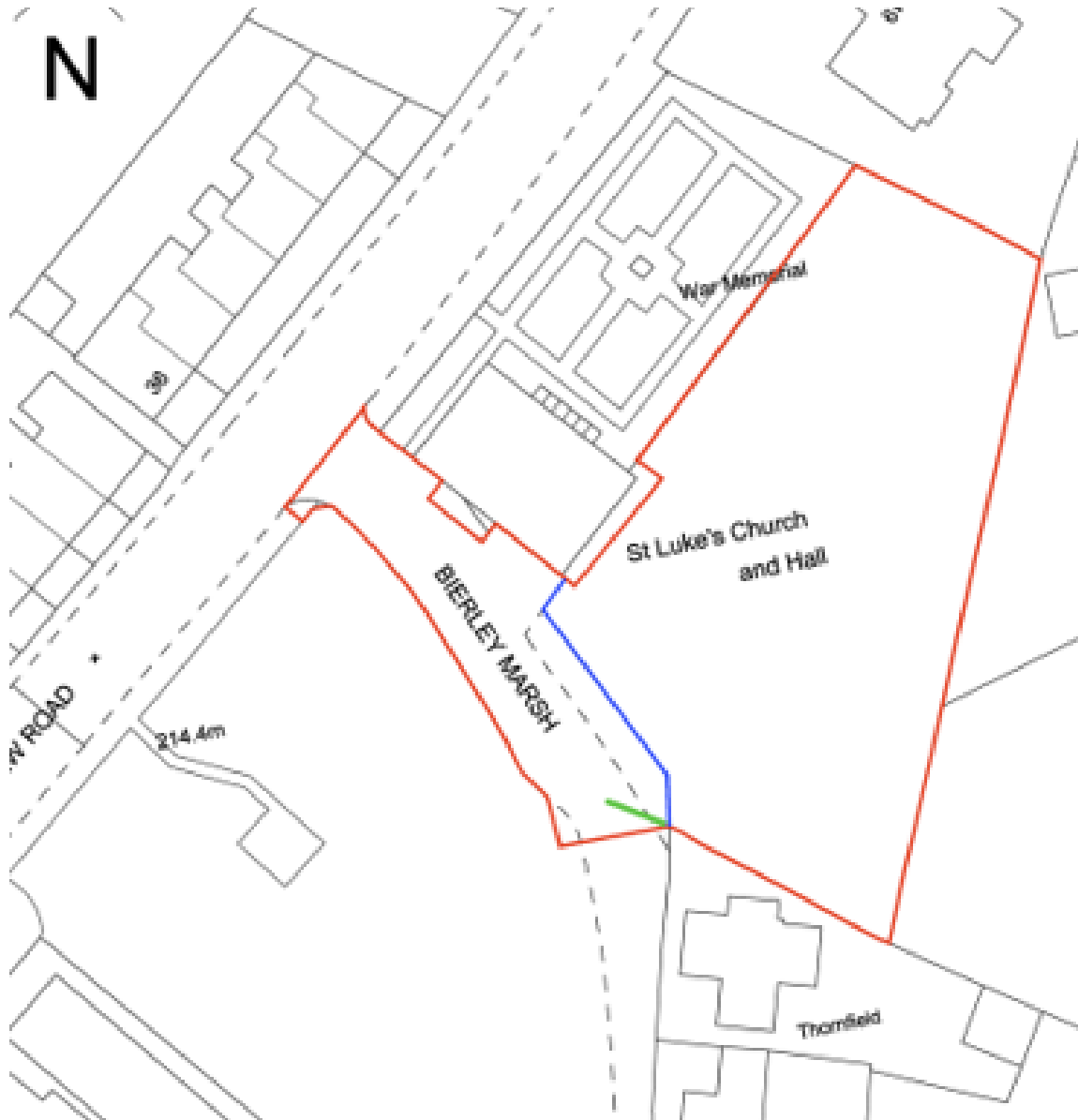
I am writing about the ownership certificate submitted with the above application. I am raising this matter urgently to help ensure the Council is not placed at risk of inadvertently processing an application that is procedurally invalid, and to protect the Council's own registered common land from being wrongly encroached upon.

Please take this letter as a formal objection to application 2026/91923, see grounds, points 1-5 below, and please publish this representation in full, in accordance with your published privacy notice, redacting only my personal contact details.

Background

This application is a Sec 73 variation to upheld application 2020/94345. A further application 2025/91001 (undecided) has been submitted to discharge details reserved by Condition 5 (access re-surface) on previous permission 2020/94345. Whilst Condition 5 remains undischarged, these works are shown on the developers' proposals, as plan MCB-24-018, the technical aspects of which were accepted as application 2024/93226. Noted that the Planning Inspector, in his Appeal Decision (Appeal Ref: APP/Z4718/W/21/3289729), stated that *"The appellant would have to apply under the Commons Act 2006 either to carry out works on the common land or to exchange land,*

that is to provide another area to become common land to replace common land they used as part of the development". Application 2020/94345, the original planning application retains full legal standing and the approved red line boundary, as plan 19.157.101, associated with the application, encompasses the works over Kirklees owned common land :



Extract from Red Line Plan 19.157.101

(green line added to plan shows northern extent of title (absolute) YY145358 land)

These matters were further referred to in the email:

From: David Reid <David.Reid@kirklees.gov.uk>
Sent: 07 May 2020 11:45
To: Louise Bearcroft <Louise.Bearcroft@kirklees.gov.uk>
Cc: Mary Hirst <Mary.Hirst@kirklees.gov.uk>; Mark Berry <Mark.Berry@kirklees.gov.uk>; JohnM Hinchliffe <JohnM.Hinchliffe@kirklees.gov.uk>; Corinne Wilson <Corinne.Wilson@kirklees.gov.uk>
Subject: RE: 2020/62/90996/E - St Lukes, Bierley Marsh, East Bierley

Thanks Louise

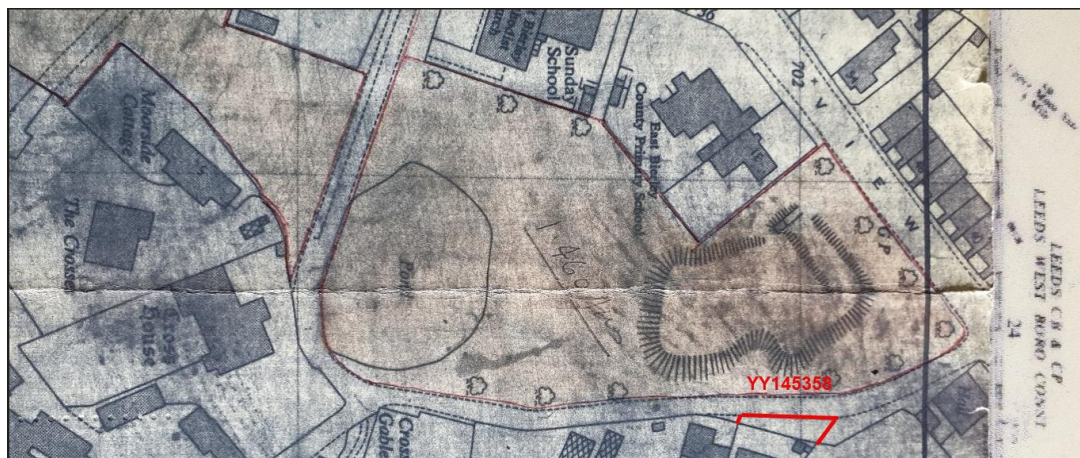
Further to my earlier email, I can confirm that the proposed Owens Developments application at Bierley Marsh will impact on the adjacent Common Land, as things currently stand. The attached plan shows the red outline boundary of the application superimposed on the green Common Land layer. As you can see, the red outline boundary extends up to 2.5 metres into the Common Land.

You will note that 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 vehicles parking in this vicinity.

In addition to the Common Land status, the land shown in green on the plan is Council owned. If planning permission is forthcoming, the developer will need the relevant sliver of Common Land de-registering and will also need to acquire the land from the Council. Colleagues in PRP & I are currently clarifying with Legal which is the most appropriate way of doing this legally, assuming that the Council is willing to relinquish this land.

Mark – just a heads up that Joe Walker is receiving queries from a 'concerned' neighbour regarding highway related aspects of this application. Joe doesn't really have the involvement in this to answer these queries, so they may be coming your way. Also, I've copied John into this because he's received a S38 application from the developer.

It is also the case that Bierley Marsh, and part of the verge, defined by the 1965 Common Land registration Plan for CL222 and title WYK813938, see below, remain unregistered and under the Ad medium filum presumption, fronting property and landowners (Thornfield, St Luke's and Kirklees) enjoy ownership of the subsoil, to the center line of Bierley Marsh along their frontages:



Extract from Common Land Registration Plan for CL222 (Registered land, YY145358 added)

It is further noted that up to his death in 2018, the land currently being developed was used for growing cut flowers and vegetables. In planning terms classified as agricultural (specifically horticulture and market gardening).

Grounds for my Objection:

1. Incorrect ownership certificate and agricultural land declaration.

Below are abstracts from the application – Ownership Certificate and agricultural Land Declaration.

Ownership Certificates and Agricultural Land Declaration Certificates under Article 14 - Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) Please answer the following questions to determine which Certificate of Ownership you need to complete: A, B, C or D. Is the applicant the sole owner of all the land to which this application relates, and has the applicant been the sole owner for more than 21 days? E.g. All the land is owned by a single individual ☒ Yes ☐ No Is any of the land to which the application relates part of an Agricultural Holding? ☐ Yes ☒ No	Certificate Of Ownership - Certificate A I certify/The applicant certifies that on the day 21 days before the date of this application nobody except myself/ the applicant was the owner* of any part of the land or building to which the application relates, and that none of the land to which the application relates is, or is part of, an agricultural holding** * "owner" is a person with a freehold interest or leasehold interest with at least 7 years left to run. ** "agricultural holding" has the meaning given by reference to the definition of "agricultural tenant" in section 65(8) of the Act. NOTE: You should sign Certificate B, C or D, as appropriate, if you are the sole owner of the land or building to which the application relates but the land is, or is part of, an agricultural holding. Person Role ☒ The Applicant ☐ The Agent Title Mr First Name Stephen Surname Owens Declaration Date 08/07/2026 ☒ Declaration made
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Based on the above evidence these declarations would appear incorrect.

Given the Council's own confirmed ownership of the registered common land at [title number WYK813938 / CL222] , which falls within the red line boundary of application 2020/94345, Certificate A appears factually invalid. The red line also extends over unregistered land subject to the *Ad medium filum* presumption that ownership of an adjoining road or track extends to its center line), which further undermines the certification.

2. This is a procedural bar, not a matter of opinion

Further to Section 65/66 of the Town and Country Planning Act 1990 and the associated certification requirements, I question whether, or not, the Council is legally barred from validating or determining this application.

3. The Council's own records already confirm this

The Council's Freedom of Information response [FOI reference 42496] confirms that Kirklees has no record of the developer's access rights over parts of the land in question. This is the Council's own data, not conjecture, and it stands as evidence unless and until the applicant produces explicit conveyance documents that formally rebut it.

42496 - Private vehicular access over public footpath SPE 6-20/30 > Inbox x

Freedom Info <Freedom.Info@kirklees.gov.uk>
to me ▾

Thu 26 Mar, 15:02

Dear Mr Hill

I am writing in response to your request dated 5 March 2026. This has been dealt with under the Environmental Information Regulations 2004.

Your questions and the Council's response are as follows

Please confirm that the developer has private vehicular access rights over public footpath SPE 6-20/30 to enable him to lawfully run construction vehicles over the public footpath and ultimately serve the new properties.

[This information is not held.](#)

Please also confirm that Kirklees have discharged condition 5 as application 2025/91001.

[The Application is still live and can be viewed by the enquirer via the below link:](#)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2025%2F91001>

Furthermore, I refer to comment:

→ Highways Registry <Highways.Registry@kirklees.gov.uk>
to me, Karen, Catherine, parks ▾

Fri, 11 Mar 2022, 12:54 ★ ☺ ↶

Dear Mr Hill

Bierley Marsh is an unadopted road which carries a legally recorded public footpath (Spenborough Footpath No. 6).

Under S34(1) of the Road Traffic Act 1988, it is an offence to drive a mechanically propelled vehicle, without lawful authority, on a road that is a footpath. However, it is not an offence if a person drives a mechanically propelled vehicle on any land within fifteen yards of a road for the purpose only of parking the vehicle on that land.

It is also worth considering the phrase "lawful authority". Clearly, there may be instances when drivers have lawful authority to drive on a road which carries a footpath. For example, local landowners such as yourself have to drive along Bierley Marsh to access your property. However, the law places the onus on everyone driving on a road which carries a footpath to prove that they have the right to do so. Simply having done so for a number of years may not necessarily constitute proof of a legal private vehicular right.

4. Conclusion

Given the above, I ask that the Council:

1. Treat the application as procedurally invalid, or
2. Require the applicant to produce explicit conveyance documents proving their claimed ownership of the land in question, sufficient to rebut the Council's own registered title and FOI findings;
3. Require the applicant to serve a correct Certificate (B, C or D, as appropriate) naming all affected owners, including the Council, before the application is validated or determined

I have set out separate observations on the planning merits of the application (including heritage matters) in a separate letter, so that this procedural, ownership-certificate issue is not lost among them, however below I refer to further matters associated with the parts of common land and the public footpath SPE 6-20/30, affected by this application.

5 Further Comment on Associated Matters

For the record, and in as much as it applies to this application, I have also written separately regarding the undischarged Condition 5 of the main application, 2020/94345. I have referred to a “Lock Box” dilemma; where it has been stated that planning and common land law are "wholly separate", while technically distinct statutes, the previous Section 73 application/decision, 2024/93227, has now inextricably interlocked them.

Under the varied Condition 5, the completion of an access and resurfacing scheme over Bierley Marsh, part of registered common land CL222, is now a strict condition precedent to the lawful occupation of the dwellings.

As far as I am aware no Section 38 consent under the Commons Act 2006 has been obtained for these restricted works, or section 16 matters addressed. The Inspector explicitly warned that planning permission "would not override" this statutory requirement.

This creates an irreconcilable legal dilemma: If the developer carries out the resurfacing over the common without Section 38 consent, the works risk being a criminal offence and subject to enforcement under the Commons Act 2006. If the works are not carried out, Condition 5 cannot be complied with, and any occupation of the dwellings would be in direct breach of planning control.

A further hurdle exists; the restrictive covenant contained in title WYK813938 provides an additional, independent layer of protection for the common land at Bierley Marsh (CL222), separate from its statutory common land status. Registered against the land known as "The Green," it requires the land to be laid out and preserved as a green and prohibits any building, or appropriation for any purpose other than as a green. This covenant operates independently of the Commons Act 2006 consent regime and the Local Government Act 1972 appropriation limits.

It is also the case where the developer is unable to prove his vehicular access rights over SPE 6-20/30, the titles associated with any new properties may be exposed to challenge.

I would be grateful for your written acknowledgement of this letter and display it in full on the Kirklees Planning Portal.

Yours sincerely,