

Date: 07 August 2026

FAO: Elenya Jackson,

Case Officer Planning and Development Service Kirklees Council

PO Box 1720

Huddersfield,

HD1 9EL

By email: Elenya.jackson@kirklees.gov.uk; dc.admin@kirklees.gov.uk

**FORMAL REPRESENTATION: OBJECTION TO PLANNING APPLICATION
2026/91923 Land at St Luke's, Bierley Marsh, East Bierley, BD4 6PL Objection
regarding the factual inaccuracy and invalidity of submitted Plan 19.157.104J**

Dear Ms. Jackson,

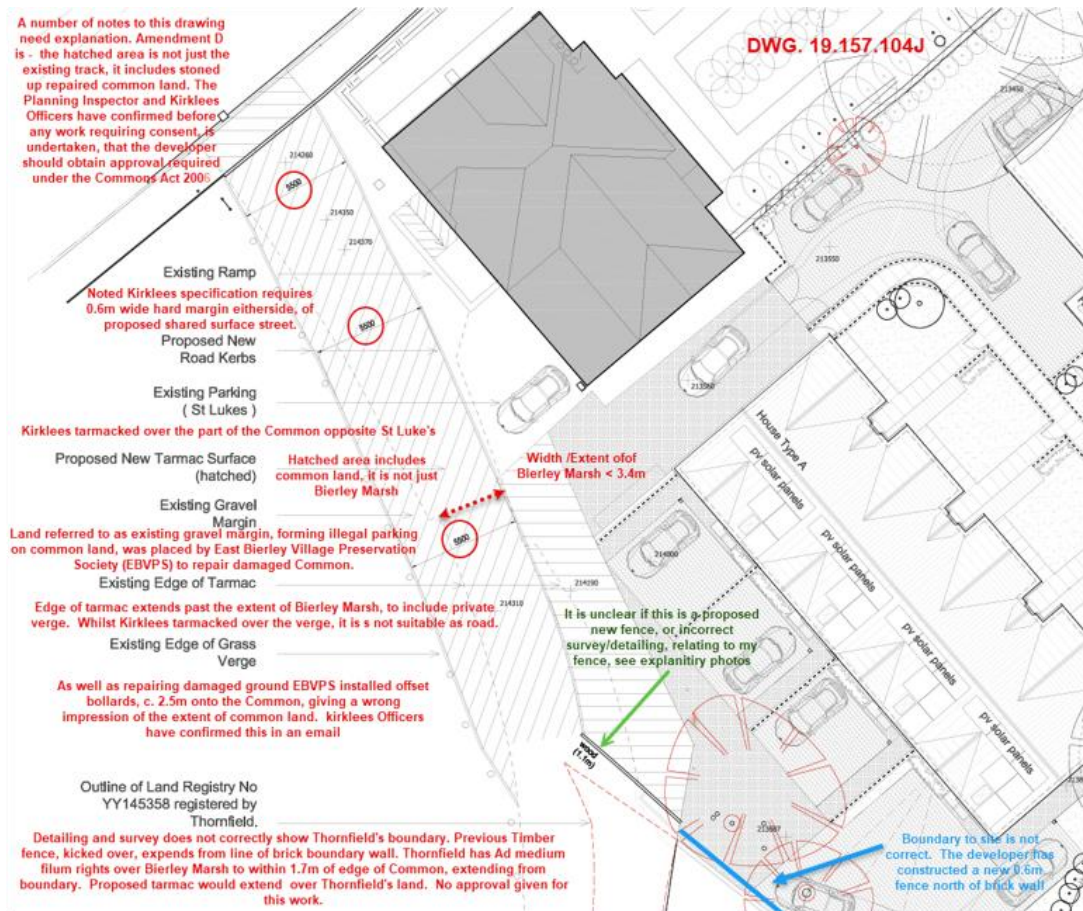
I am writing to submit a further formal objection to planning application **2026/91923**, which seeks a Section 73 variation of Condition 2 (approved plans) of planning permission **2020/94345** (allowed on appeal, ref. APP/Z4718/W/21/3289729). In introducing solar panels, the developer has submitted site layout Plan **19.157.104J**.

I have made representations previously regarding the survey data used and inaccurate and potentially misleading details associated with the developer's layout plans. **I again formally object and request that Kirklees Council refuse this application on the grounds set out below.**

1. Inaccuracy and Misleading Depiction of Site Boundaries

Under English planning law, and specifically **Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015**, planning applications must be accompanied by accurate, reliable, and up-to-date plans that define the application site and its physical relationship to its immediate surroundings. Determining a planning application based on demonstrably incorrect mapping and boundary detailing constitutes a material procedural error that risks invalidating any subsequent permission.

Examples of discrepancies, inconsistencies and notes (for clarity) are summarised below:



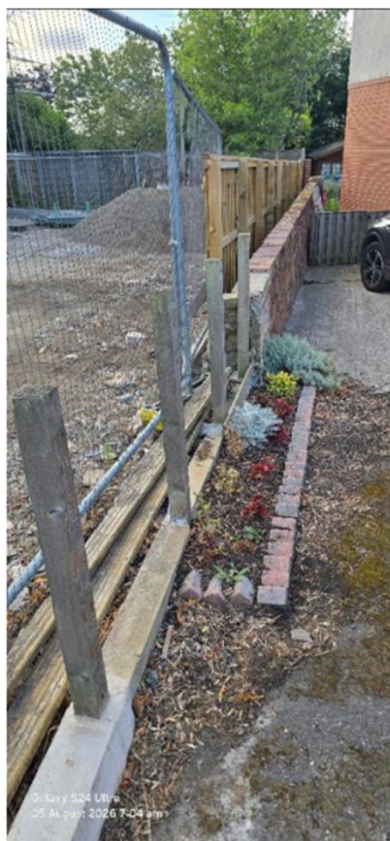
The developer's submitted site plan (**19.157.104J**) does not accurately reflect the physical position of my former timber boundary fence (historically aligned with the brick wall of my property, Thornfield), nor does it correctly illustrate the developer's new timber (boundary) fenceline now erected on-site (shown blue above).

For the avoidance of any doubt photographic evidence prove that the former timber boundary fence extended as a direct projection from my brick boundary wall. This fence – line was approved by Kirklees, as application 2024/90661 and I am in possession of a Lawful Development Certificate for its erection.

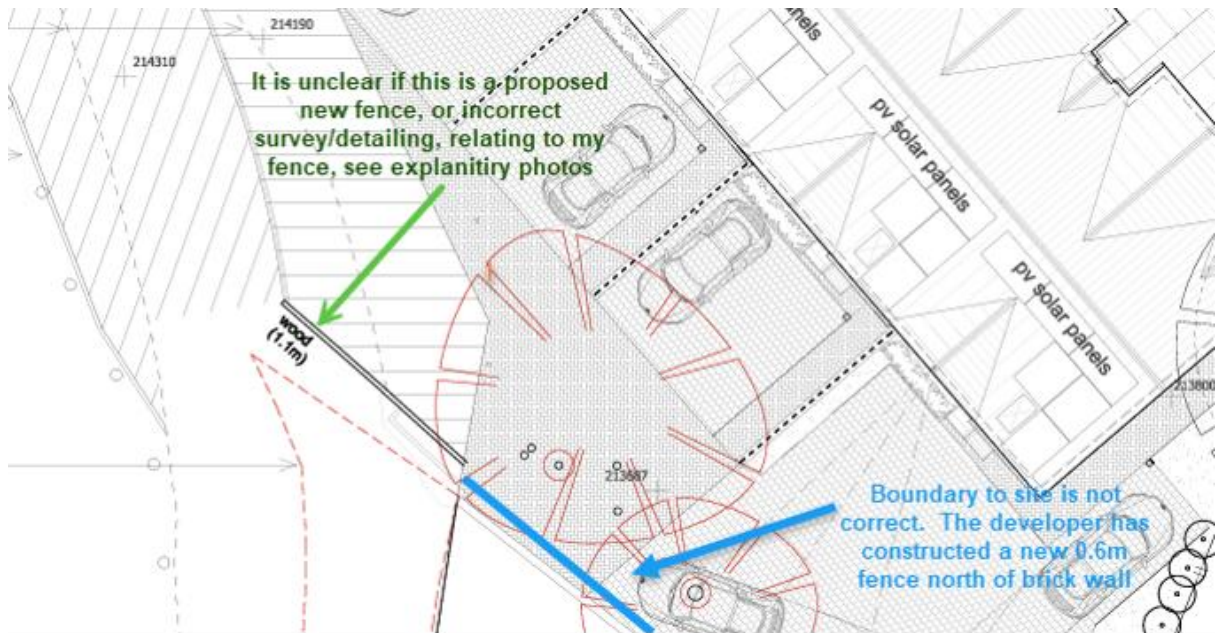
This fence has been damaged and removed from the site, but the base plate remains and can be clearly seen:



The developer's newly erected southern boundary fence is offset by approximately 600mm from my brick boundary wall, and is possibly associated with my easement to maintain my wall:



The discrepancy on Plan 19.157.104J is further highlighted when comparing the plan with the developers Access-Resurfacing Plan (drawing MCB-24-018), which details the boundary alignment with a much higher degree of physical accuracy in relation to the actual position on the ground.



Expanded extract from plan 19.157.104J shown boundary/fence-line detailing



Access-Resurfacing Plan MCB-24-018

This physical discrepancy is not a minor civil matter; it directly impacts the developer's ability to satisfy the Planning Inspector's **Condition 33**, which states:

"In the interests of living conditions of neighbouring residents as well as the character and appearance of the area, details of the boundary treatments and bin collection point are necessary."

By failing to accurately represent the physical site boundaries and the actual relationship of the new fencelines to Thornfield, the developer's Plan **19.157.104J** creates an inconsistent, inaccurate, and contradictory planning record that prevents the Local Planning Authority from safely assessing boundary treatment compliance under Condition 33.

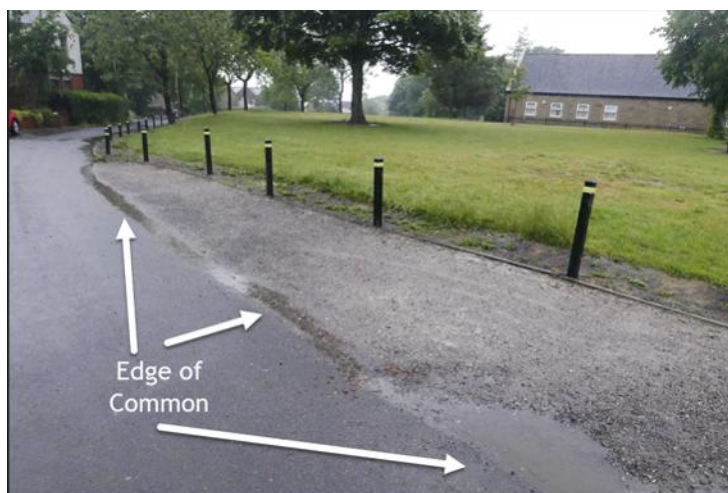
Other Missing Infrastructure and Highways Inadequacies Furthermore, there is a critical absence of mandatory infrastructure information required by the **Kirklees Highways Design SPD** (specifically sections 3.15–3.19 and Table 1 regarding shared streets). :

- The drawings completely fail to identify the statutory bin storage and presentation locations required under planning guidelines.
- The layout fails to illustrate the mandatory 0.6m hard margins required on either side of the 5.5m shared street, violating Section 1.7 of the Highways Design SPD.

2. Protection of Registered Common Land CL222

Plan **19.157.104J** refers to **Note D**, which references a **"Hatched Area of Existing Track added."** This description is factually incorrect and creates a materially inaccurate impression of the site.

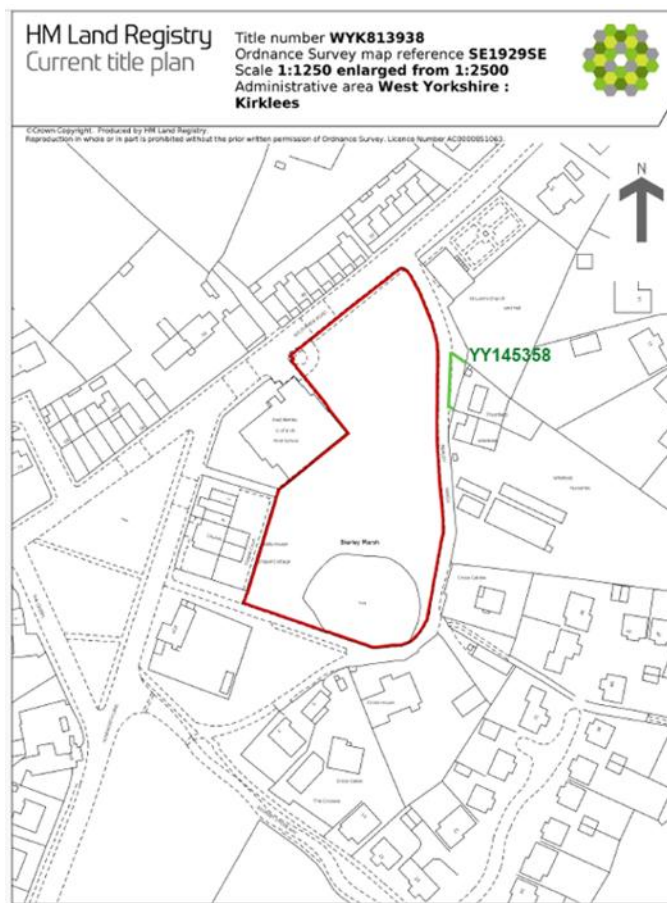
The "hatched area", in part only, is over the private street Bierley Marsh; it is also partly over land as repaired registered common land **CL222**. Historically, the East Bierley Village Preservation Society, with the support of Kirklees Council, placed loose stone on this area of the Common to prevent soil erosion, with placement of offset plastic bollards:



This has had the effect of obscuring the visual extent of Bierley Marsh, while incidentally creating informal parking bays. Kirklees Highways Registry have confirmed that the stoned up /repaired land remains registered common land, not Bierley Marsh and have referred to the definitive 1965 Common Land Registration Plan, for CL222:



Kirklees own the Common as title plan WYK813938:



1965 Commons Land Registration Plan / Title Plan WYK813938, annotated with title (absolute) land YY145358 and photo showing location loose stone repair.

Under **Section 38 of the Commons Act 2006**, works that involving hard surfacing over registered common land require the formal, statutory consent of the Secretary of State (via the Planning Inspectorate).

The position would appear that, if the developer is refused Commons Act consent, they cannot lawfully implement the resurfacing. If they cannot resurface, they cannot satisfy Condition 5, meaning the houses can never legally be occupied

If approved on the basis that these repair works form part of the track, this risks facilitating unauthorised works on protected common land, irrespective of intent, because the necessary Section 38 consent has not been obtained.

It is also the case that 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.

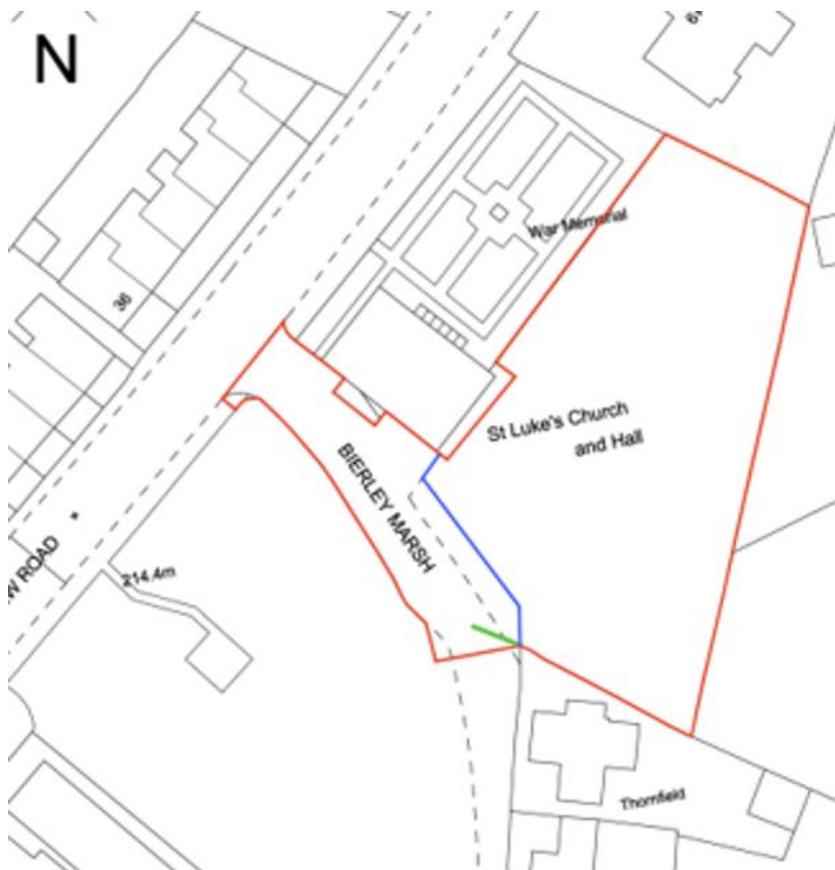
The restrictive covenant requires the land to be laid out and preserved as a green and prohibits any building, or appropriation for any purpose other than as a green.

Given the legal importance of the matters above I request that this application is not approved.

3. Potential Unauthorised Works Outside the Application 'Red Line' Boundary

It is unclear why the developer has submitted the now-superseded drawing **19.157.104B** with this application.

It is an established principle of planning law that planning permission cannot authorise development or physical works on land that falls entirely outside the application's red-line site boundary (defined by drawing **19.157.101**, approved as part of the upheld application 2020/94345, extract below:



Extract from plan 19.157.101 (green line shows extent of YY145358 fence)

Plan 19.157.104B, extract below, contains explicit annotations proposing the removal and relocation of existing protective steel bollards protecting the Common adjacent to the boundary with Bierley Marsh:



Extract from plan 19.157.104B & photo of bollards in question

These bollards, lie entirely outside the developer's red-line boundary. They are historical boundary markers installed by Kirklees Council to protect the common land from vehicular encroachment.

It may be that the developer is not proposing again o re-site these bollards, however, any physical works or alterations to these bollards by the developer would constitute an unauthorised intervention on land outside their control, representing a material defect that invalidates the scope of the application.

I ask that Kirklees take positive action to stop the developer re-siting these bollards if that is the developers intention.

4. Encroachment on Registered Easements and Private Utility Infrastructure

The land situated along the northern boundary of my property (Thornfield), highlighted green on Title Plan WYK239114, below is subject to easements registered with HM Land Registry in 1985 and 1989. These easements protect critical underground utility services and private infrastructure serving Thornfield:



Utility easement diagrams / Land Registry documents)

The physical groundworks, heavy machinery access, and proposed resurfacing layouts directly encroach upon this registered easement strip. This represents a severe physical threat to the structural integrity and operation of my property's essential utility services, which have already damaged by the developer.

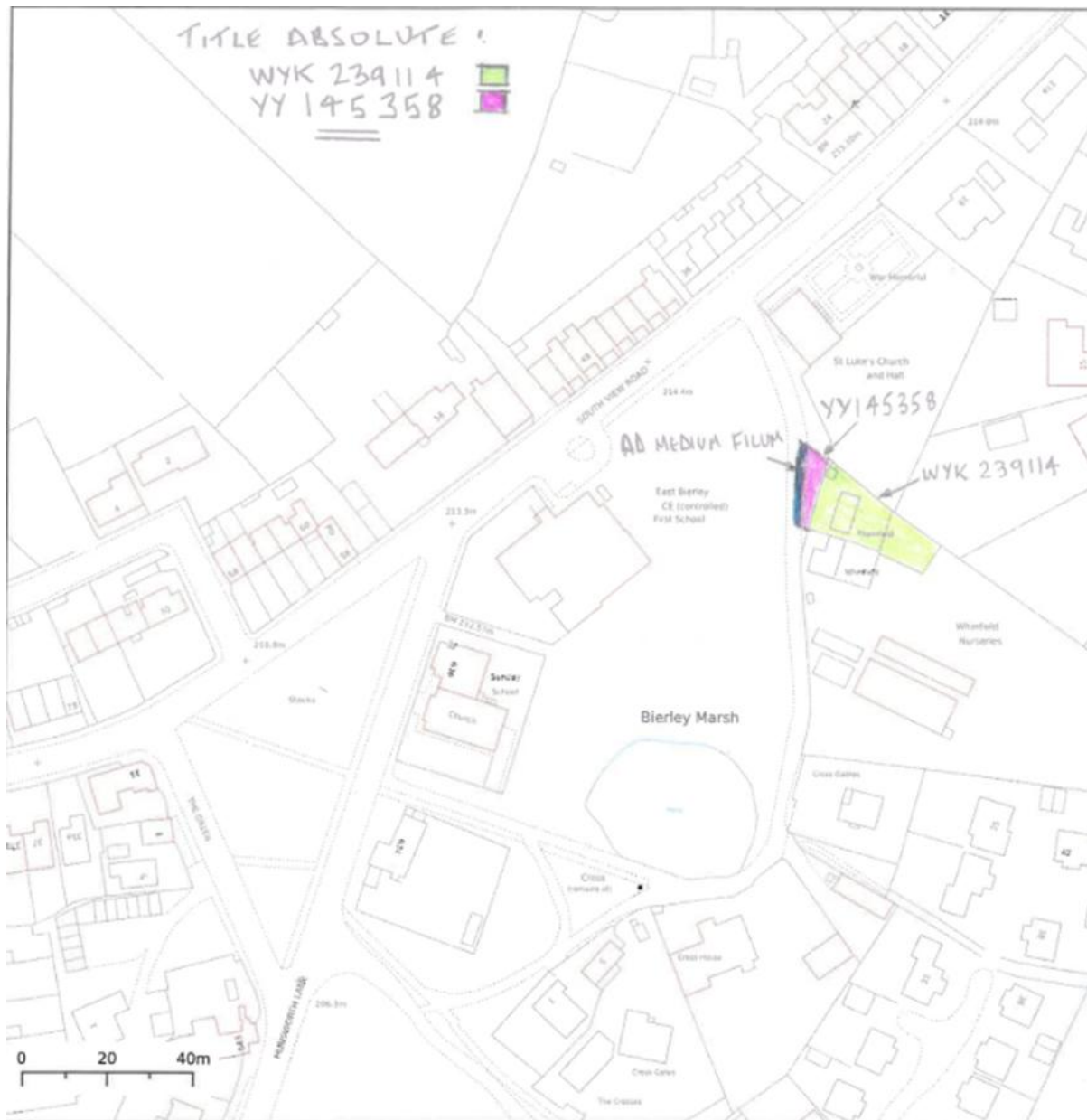
While easements are private civil rights, the physical deliverability, layout feasibility, and safety of a development in relation to existing critical utility infrastructure is a key material planning consideration that Kirklees Council is duty-bound to assess before granting any new varied permission.

5. The Ad Medium Filum Presumption and Encroachment on Accrued Rights

Bierley Marsh originally developed as a narrow private access way. Kirklees Council's own formal correspondence from 1992 explicitly confirms that the street *"was never constructed but evolved over time."* On-the-ground physical evidence and extent of stone setts demonstrate that the actual track of Bierley Marsh has a maximum width of only 3.4 metres.

Under the long-standing common law presumption of **ad medium filum viae** (to the middle line of the way), in the absence of evidence to the contrary, my freehold ownership under Title Absolute **YY145358** extends to the centreline of Bierley Marsh (representing a 1.7m, half-width from the boundary between the metalled surface of Bierley Marsh and Common Land, CL222).





Map Scale: 1:1,250

Date: 27/09/2022

Vintage: 2001

Grid Reference: SE1984629177

Centre Coordinates: X:419846 Y:429177

Thornfield Title and subsoil extent diagram

The developer has no legally established private vehicular access rights over my half-width of the road. From the evidence above, the developer's depiction of my timber fence line is not supported by the photographic and survey evidence set out above.

Any proposal to execute extensive groundworks, drainage excavations, or road widening within this 1.7m zone, extended out along my boundary lines, directly infringes upon my freehold property rights. In the absence of my consent or the service of a formal Article 13 Notice (Notice to Owners of Land), the application has failed to satisfy the statutory land ownership certification requirements of Section 65 of the Town and Country Planning Act 1990, rendering it procedurally invalid.

6. Absence of Established Vehicular Access Rights over Public Footpath SPE 6-20/30

As far as I am aware the developer has failed to produce any legal deed or title document establishing private vehicular access rights over Bierley Marsh (Public Footpath SPE/6/20).

Kirklees Council's formal Freedom of Information response (Reference 42496) states:

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

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>

That response appears to suggest that Kirklees holds no evidence of any legally established private vehicular access rights in favour of Owens Developments Ltd or its predecessors in title over this public footpath corridor. **I ask that Kirklees Planners confirm whether this is the case or not.**

Nor do any easements through Prescription or Necessity exist. The field, originally sold as garden in 1932, has only been accessed on foot through a narrow timber gate (replaced ahead of planning) and worked by hand.

In the absence of a verified right of access, the layout shown on Plan 19.157.104J would appear legally undeliverable.

6. Requested Action and Formal Objections

In light of these errors, site discrepancies, missing highways infrastructure, and unresolved boundary conflicts detailed above, I formally request that Kirklees Council planning services:

1. **Refuse to accept or determine** the current variation application based on the factually incorrect and contradictory Plan 19.157.104J.
2. **Require the developer** to submit an accurate, verified on-the-ground survey of the physical fencelines to ensure full alignment with drawing MCB-24-018 and Condition 33.
3. **Formally verify the developers private vehicular access rights over public footpath SPE 6-20/30, to** ensure works shown on Plan 19.157.104J are lawful.
4. **Require the developer** to enforce protective buffer zones around the registered utility easements of Thornfield to safeguard our active underground services.
5. **Publish this representation in full** on the public Planning Portal, redacting only private contact details, in accordance with Kirklees Council's public involvement guidelines.

Please confirm receipt of this objection.

Yours sincerely,