

DC Admin

From:
Sent: 12 August 2026 10:16
To: Elenya Jackson; DC Admin; planning dm; S H
Cc: Cllr Elizabeth Smaje; Mathias Franklin
Subject: Objection to Planning Application 2026/91923. The developers lack of private vehicular access rights over public footpath SPE 6-20/30, to support development.

Elenya,

Please find below my formal objection to application 2026/91923. I request that this objection is published in full on the Kirklees Planning Portal, in accordance with Kirklees Council policy.

I refer to previous correspondence with the Council concerning the absence of any legally established private vehicular access rights, associated with the field now proposed for development, over public footpath SPE 6-20/30. This issue is set out in detail in my letter to Mathia Franklin dated 13 April 2026, and in other communications.

In response to my request under the Freedom of Information Act, FOI 42496, I asked Kirklees Council to identify the legal basis on which the developer is said to enjoy private vehicular access rights over public footpath SPE 6-20/30, so as to lawfully run construction vehicles over the public footpath and ultimately serve the proposed dwellings. The Council's response stated:

“This information is not held”.

The 1932 deed relating to the sale of the land now being developed is silent as to any express grant of private vehicular access rights. The field in question was historically accessed only on foot, via a narrow timber gate, and worked by hand. On that factual and documentary basis, no prescriptive right, nor any right arising by necessity, can properly be said to exist. In the absence of any established private vehicular access right over SPE 6-20/30, the title to any new dwellings would be defective and incapable of benefitting from a lawful vehicular means of access.

The position in relation to access gives rise to a further “lock-box” situation. The Council has previously asserted that planning law and common land law are “wholly separate” matters. While the two regimes are indeed distinct, the Council's own decision under Section 73, application 2024/93227, has in practice

inextricably interlocked them. By virtue of varied Condition 5, completion of an access and resurfacing scheme over Bierley Marsh — including works affecting registered common land CL222 — is now a strict condition precedent to the lawful occupation of the dwellings.

No consent under Section 38 of the Commons Act 2006 appears to have been obtained for these restricted works, nor is there any indication that Section 16 issues have been addressed. The Inspector expressly cautioned that planning permission “would not override” the statutory requirements applicable to the common.

This creates an apparent legal impasse. If the developer proceeds with the resurfacing works over the common without Section 38 consent, those works risk constituting a criminal offence and being liable to enforcement action under the Commons Act 2006. Conversely, if the works are not carried out, Condition 5 cannot be discharged, and any occupation of the dwellings would be in clear and continuing breach of planning control.

In light of the above, I would be grateful if the Council could confirm, in specific and substantive terms:

- What steps have been taken, or are proposed, to resolve the conflict between Condition 5 and the requirements of the Commons Act 2006, including Sections 38 and 16.
- Whether the Council accepts that Condition 5 cannot lawfully be discharged in the absence of Section 38 consent (and, where applicable, Section 16 clearance) for the works required over Bierley Marsh and CL222.
- What enforcement action the Council intends to take, if any, in the event that the developer proceeds with works on the common without the necessary consent, or alternatively if occupation of the dwellings proceeds in breach of Condition 5.

I trust the Council will provide a detailed response addressing each of these points, rather than a further reiteration of the general proposition that planning and common land matters are separate. As set out above, the Council’s own Section 73 decision appears to have rendered that separation untenable in this particular case.

Regards