



Application Decision

Site visit made on 20 February 2018

by Alan Beckett BA MSc MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 22 March 2018

Application Ref: COM 3184303

Great Common, Rock, St Minver Lowlands, Cornwall

Register Unit: CL 554

Commons Registration Authority: Cornwall Council

- The application, dated 11 September 2017, is made under section 38 of the Commons Act 2006 ('the 2006 Act') for consent to carry out restricted works on common land.
- The application is made by Captain Rob Atkinson on behalf of the Padstow Harbour Commissioners.
- In Area 1 (115m²) (see drawing 11018-361-P1) the permanent works comprise: the removal of existing timber and large stone boulder retaining walls; the lowering of existing ground levels to car park level; the installation of a loose surfaced pedestrian access to connect the car park extension to the pedestrian access on the adjacent slipway access; the installation of a timber retaining wall to support the elevated planting level required in the landscape and visual impact mitigation scheme; regrading of land to form the elevated planting levels; lowering the existing stone retaining wall by one course; the installation of 21 metres of permanent stock fencing to the top of the retaining wall as a marker and barrier; the planting of the indicated planting scheme for visual impact mitigation; planting of 38.5m² of the lowered common; the placing of boulders to prevent car parking in the un-tarmacked area.
- In Area 2 (75m²) the permanent works comprise: regrading to form retained embankment at an approximate grade of 1 in 2; placement of loose boulders to form reptile habitat replacement as per Landscape and Ecological Management Plan; planting of a landscape and visual impact mitigation scheme. Temporary access over common land is required for the purpose of executing the works.
- Area 3 (465m²) included in mitigation planting scheme as area of natural recolonization. Temporary access is required for the purpose of executing the works.
- Area 4 (325m²) 51m of temporary fencing to protect existing planting during the duration of the works.
- Area 5 (3213m²) 190m of temporary fencing to provide a work site and storage area for boulders used for reptile habitat replacement.

Decision

1. Consent is granted for the works above in accordance with the application dated 11 September 2017 and the plans submitted with it subject to the following conditions:
 - (i) The works hereby consented shall be begun before the expiration of 3 years from the date of this decision.
 - (ii) All temporary fencing shall be removed upon completion of the works.

- (iii) All boulders stored within the boundary of Rock Dunes SSSI shall be wholly outside the dune habitat and to the west of the existing fence shown on plan 11018-361-P1 attached to this consent, and no vehicles shall be taken into the dune habitat of the Rock Dunes SSSI.

Procedural Matters

2. I carried out an accompanied site inspection on 20 February 2018. My decision has been made on the basis of my observations on this visit, taking account of the application and representations received in response to the advertisement of the application.
3. I have had regard to the Department for the Environment, Food and Rural Affairs Common Land Consents Policy, published in November 2015, which sets out the benefits which common land should deliver, and the outcomes that it considers must be ensured by the consents process. This document has been published for the guidance of both the Planning Inspectorate and applicants. However, the application will be considered on its merits and a determination will depart from the published policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

The Main Issues

4. Section 38 of the 2006 Act provides that a person may apply for consent to carry out restricted works on land registered as common land. Restricted works are any that prevent or impede access over the land, including the erection of fencing. In considering such an application I am required by section 39 of the 2006 Act to have regard to the following:
- (a) the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - (b) the interests of the neighbourhood;
 - (c) the public interest which includes the interest in nature conservation, the conservation of the landscape, the protection of public rights of access and the protection of archaeological remains and features of historic interest;
 - (d) any other matters considered to be relevant.

Assessment

The interests of those occupying or having rights over the land

5. There are no registered rights of common on the Great Common at Rock. The freehold of the common is split between the Duchy of Cornwall and the Trustees of St Enodoc Golf Club. Part of the Duchy lands on the common are leased to the Padstow Harbour Commissioners ('the Commissioners') and the proposed works are wholly within the land leased to the Commissioners.
6. Given that the application has been made by the Commissioners in order to obtain all the necessary consents for their proposal to extend the car park at Rock, I consider that the proposed works would not have any adverse effect upon their interests.

Interest of the neighbourhood

7. The 2015 guidance indicates that the issues to be considered in this context include whether or not the proposal will offer a positive benefit to the neighbourhood, whether or not the works would prevent local people from using the common in the way they are used to, and whether or not there would be an interference with the future use and enjoyment of the common, whether by commoners, the public or others. For example, would any fencing sterilise part of the land rendering it inaccessible.

Positive benefit

8. The proposed works are part of the applicant's scheme to extend the public car park at Rock. The car park is said to be an important access point for the public to the beach area, the common, the nearby SSSI and the South West Coast Path and other facilities in Rock. The car park also functions as a 'park and ride' facility for those wishing to travel to Padstow via the ferry. The applicant states that in the summer months the existing car park is over-subscribed which results in cars queuing along Rock Road during peak periods; the provision of an additional 50 car parking spaces is likely to address some of the problems experienced in the village during the summer months.
9. The planting being proposed as part of the visual impact mitigation scheme approved by the planning authority is a mixture of native plant species and taken together with the proposal to remove non-native Himalayan Cotoneaster from the common is likely to improve biodiversity within that part of the common between the car park and the shore.
10. I understand that previous schemes aimed at stabilising the dune system between the car park and the shore have left a number of trip hazards in place and that access across the dunes is restricted as a result. Permanent fencing is required as part of the overall scheme to prevent falls from height as a result of the regrading of part of the land and to mitigate risks from trip hazards present in the dunes. I note that there are existing fences on the common which prevent access to parts of the dunes.
11. The proposed works will provide an opportunity to assess the extent of the trip hazard and the feasibility of removing or mitigating those hazards to improve access to the dunes. Depending on the outcome of the prospective assessment of the dunes, the applicant considers that it may be possible to move the existing fencing to reduce the area from which the public are excluded. The removal or relocation of the existing fence does not form part of this application; if the applicant considers it possible to relocate the existing fence, a separate application under s38 is likely to be required. If the assessment of the trip hazards within the dune results in a decision to retain the existing fence in its current position, there would be no additional detriment to access over the common.
12. As part of the planning permission granted to the applicant for the car park extension, permission was granted for the tarmacking of 115m² of the common situated between the car park entrance and the slipway access. The applicant has decided not to pursue this part of the permission as it is considered to be incompatible with the general aims of the policy towards common land. This

area will however be levelled to conform to the level of the car park and then grassed over. Measures will also be taken to prevent cars being parked on this area and to segregate vehicles from pedestrians walking over this area to approach the slipway.

13. I consider that the proposed works are unlikely to have any adverse impact upon how the common is used by those persons resident in the neighbourhood. Access to the common is via the car park, the slipway and the South West Coastal Path which passes through the car park. The proposed works are unlikely to interfere with the current or future use of the common by residents or visitors. There will be a temporary interference with access to the common resulting from the need to secure the worksite for the duration of the works. However, any such interruption or interference would be of limited duration.
14. I note that a diversion order has been made and confirmed under the provisions of the Town and Country Planning Act 1990 for the existing footpath through the car park to be diverted to a new alignment through the south western part of the common as part of the development of the car park site¹. None of the proposed fencing or landscaping works impinges upon the footpath or other means of access which will remain free from any additional structures.
15. I consider it unlikely that the proposed works would have a significant adverse effect upon the ability of residents in the neighbourhood to enjoy the area for informal outdoor recreation or that the interests of the neighbourhood would be unduly harmed by the proposals.

The public interest

The protection of public rights of access

16. The common is registered as Open Access Land under the Countryside and Rights of Way Act 2000. As noted above, part of the South West Coast Path will be diverted from the car park to a new alignment on the south-west side of the common and nearer to the shoreline. The works to remove and replace the existing retaining walls in the vicinity of the slipway access, together with the re-profiling of a small area of the common would contribute to safe access to the common for pedestrians and reduce the possibility of conflict between pedestrians and vehicles in the vicinity of the car park access. I consider that the proposed works would not unduly restrict access to the common on foot.

Nature conservation

17. As part of the planning permission for the car park scheme, Condition 7 stipulated that no works were to commence on site until a Landscape and Ecological Management Plan had been submitted to and approved by the planning authority. Cornwall Council (as the planning authority) has certified that this condition was discharged on 6 July 2017. The Landscape and Ecological Mitigation Plan not only provides details of the species composition of the new planting but also a method statement as to how the works are to be executed.

¹ The diversion will take effect on certification that the provisions of Article 2 of the Order have been complied with

18. The Ecological Appraisal Report for the site describes the habitats present on the site, the species of flora and fauna present and notes the occurrence within the site of Himalayan Cotoneaster, a species listed in Schedule 9 of the Wildlife and Countryside Act 1981 making it an offence to '*cause it to spread in the wild*'. The method by which this plant will be removed from the site as part of the works is set out in section 5 of the Landscape and Ecological Mitigation Plan, and the removal of this invasive non-native species from the site is likely to enhance the nature conservation value of the common.
19. In its response to the application, Natural England had concerns regarding the proposed temporary storage of boulders within the boundary of the Rock Dunes SSSI. Natural England has requested the imposition of conditions on the consent to avoid any potential adverse effects which the temporary storage of the boulders may have upon the special interest features of the SSSI.
20. The boulders at issue are to be used for reptile habitat recreation and are currently located in the dunes on the common just to the north-west of the slipway access. Although it is proposed to temporarily store the boulders within the SSSI, this will take place on part of the land already used for the storage of dinghies and which is devoid of any vegetation. As the boulders will not be stored within the dunes but on the flat land adjacent to the foreshore, it is unlikely that the creation of this temporary storage area will have any adverse impact upon the features for which the Rock Dunes SSSI was designated. Nonetheless, I consider that the imposition of a condition to be appropriate and in accordance with section 28G of the Wildlife and Countryside Act 1981 as a reasonable step to further the conservation and enhancement of the SSSI.
21. It is recognised in the Landscape and Ecological Mitigation Plan that the boulders currently deposited on the common are likely to provide a suitable habitat for reptiles. It is proposed that the boulders are to be moved in September or October to avoid adverse impact upon hibernating species and that the temporary stockpile should be suitably fenced to prevent re-colonisation by reptiles. I consider that the Ecological Appraisal Report and the Landscape and Ecological Mitigation Plan demonstrate that due consideration has been given to the nature conservation interest of the site and that if adhered to, it is unlikely that there would be any adverse impact upon the public interest in the nature conservation of the site arising from the proposed works.

Conservation of the landscape

22. The development of the car park requires the levelling of an area of approximately 115m² of the common together with a much larger area of land outside the common's boundary. It is recognised by the applicant that the extended car park will be visible from the Padstow side of the estuary and that the works will have an impact upon the local landscape. The Landscape and Ecological Mitigation Plan seeks to establish new areas of planting to reduce the visual impact that the lowering of the land will have. The proposed planting scheme and its management and aftercare have been designed to provide a vegetative screen to mask the car park and reduce its visual impact upon the Camel estuary.

23. Taking account of the overall purpose of the works and the intended outcomes I consider that whilst there will be a visual impact arising from the levelling of part of the common, this will be for a limited period in landscape terms. I am satisfied that the short-term visual impact is outweighed by the long-term nature conservation and habitat management objectives associated with the scheme.

Protection of archaeological remains and features of historic interest

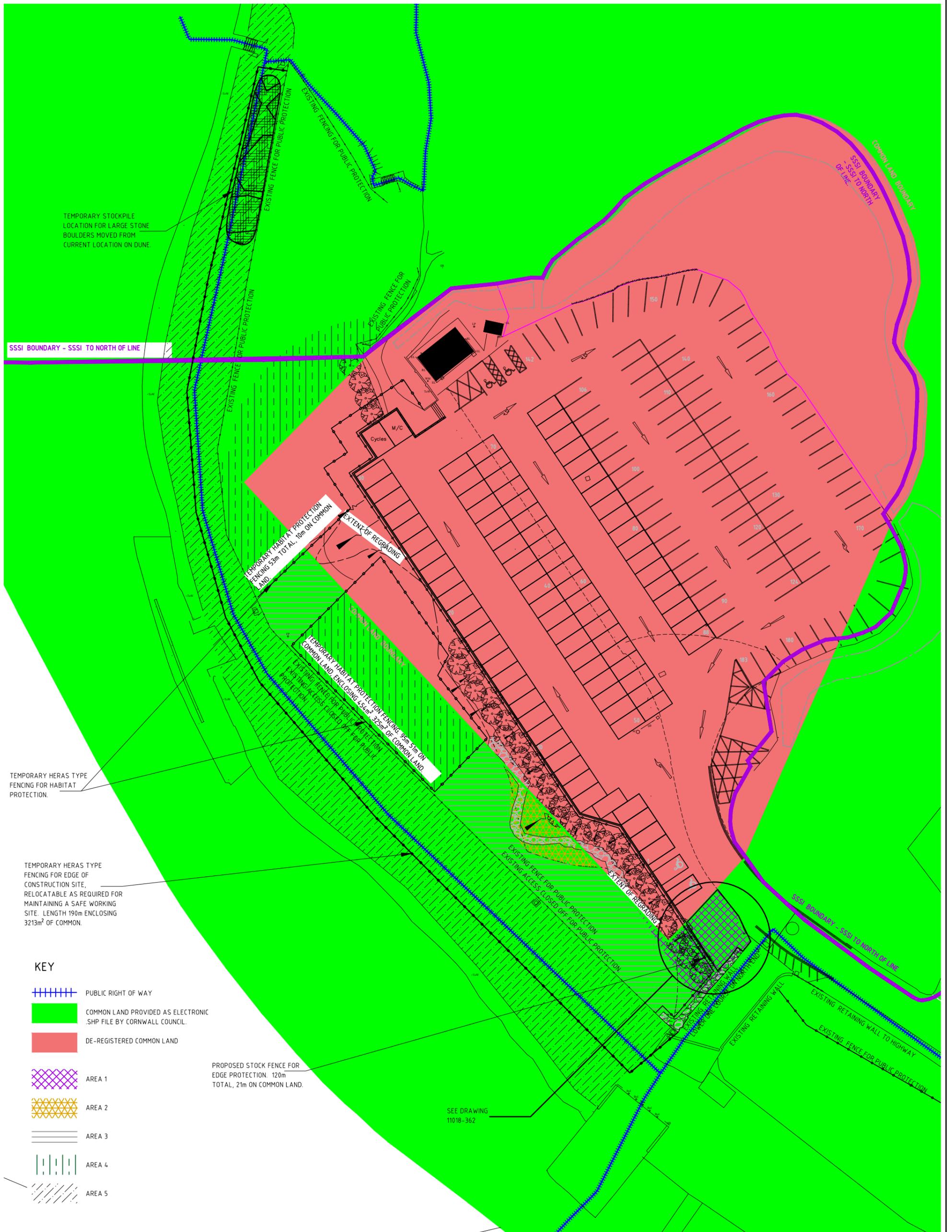
24. Historic England made no comment on the applicant's proposals. An Archaeological Assessment of the site noted that whilst a number of listed buildings in Rock and Padstow had a direct view of the site, the planting proposed to mitigate visual intrusion would screen the development sufficiently that none of these properties would be materially impacted by the extension to the car park.
25. The Archaeological Assessment identified four heritage assets within the immediate vicinity of the car park area which were of archaeological interest. One of these features was a building which had been seen protruding from the sand dunes near to the ferry site which was a former waiting room for ferry passengers. The plan attached to the Assessment suggests that this structure was located near to that part of the common to be levelled. The Assessment recommended an archaeological watching brief be provided to enable the investigation of any archaeological material uncovered as a result of the works.
26. Condition 3 of the planning permission prohibited works on the site until a Written Scheme of Investigation had been submitted and approved by the planning authority. Such a scheme was produced for the applicant by South West Archaeology Ltd in September 2016 and the condition was discharged on 6 July 2017.
27. I am satisfied that adequate provision has been made for the investigation of any features of archaeological interest that may be uncovered as a result of the proposed works.

Conclusions

28. Having regard to the interests set out in paragraph 4 above, I find that the works would not adversely affect those interests and that it is expedient that consent for the works should be given.
29. For the purposes of identification only, the locations of the 5 areas of the common in which works will take place are shown in drawing 11018-361-P1 appended to this decision.

Alan Beckett

Inspector



KEY

- PUBLIC RIGHT OF WAY
- COMMON LAND PROVIDED AS ELECTRONIC SHP FILE BY CORNWALL COUNCIL.
- DE-REGISTERED COMMON LAND
- AREA 1
- AREA 2
- AREA 3
- AREA 4
- AREA 5

PROPOSED STOCK FENCE FOR EDGE PROTECTION. 120m TOTAL, 21m ON COMMON LAND.

Client		PADSTOW HARBOUR COMMISSIONERS		Project		EXTENSION TO ROCK CAR PARK	
Status		PRELIMINARY NOT TO BE USED FOR CONSTRUCTION		Title		PROPOSED CAR PARK LAYOUT INDICATING PROPOSED WORK AREAS ON COMMON LAND	
Scales		1:250		Author		RB	
Original Size		A1		Checker		JB	
Issue		P1 PRELIMINARY ISSUE		Date		05SEP17	
Description				Drwn		RB	
				Chkd		JB	
Notes:				Client		PADSTOW HARBOUR COMMISSIONERS	
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				Date		05SEP17	
				Drwn		RB	
				Chkd		JB	
				Project No.		11018	
				Drawing No.		361	
				Rev.		P1	

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Project No. 11018 Drawing No. 361 Rev. P1