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# Application Decision

**by Richard Holland**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 14 February 2019

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## Application Ref: COM 3216960

### The Lizard Green, Cornwall

Register Unit No: CL220

Commons Registration Authority: Cornwall Council.

- The application, dated 16 November 2018, is made under Section 38 of Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
  - The application is made by South West Water.
  - The works of approximately 3 weeks duration to replace a pumped sewer main comprise:
    - (i) excavation of a 1m wide, 1.4m deep, trench for approximately 84m of sewer main; and
    - (ii) erection of 2m high Heras type temporary safety/security fencing enclosing approximately 550 square metres for the duration of the works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 16 November 2018 and accompanying plan, subject to the following conditions:-
  - i. the works shall begin no later than three years from the date of this decision; and
  - ii. all temporary fencing shall be removed and the common shall be restored within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown in red on the attached plan.

## Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy<sup>1</sup> in determining this application under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.
4. This application has been determined solely on the basis of written evidence.
5. I have taken account of the representations made by Natural England (NE) and the Open Spaces Society (OSS), neither of which object to the application.
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-

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<sup>1</sup> Common Land Consents Policy (Defra November 2015)

- 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;<sup>2</sup> and
- d. any other matter considered to be relevant.

## **Reasons**

### ***The interests of those occupying or having rights over the land***

7. The common land is owned by Landewednack Parish Council which was consulted by the applicant but has not commented on the application. The common land register records no rights of common. There is no evidence before me to suggest that the works will harm the interests of those occupying or having rights over the land.

### ***The interests of the neighbourhood and the protection of public rights of access***

8. The works are to replace the existing pumped sewer pipe, which has been in place for a number of decades and is no longer able to pass sewage effectively without risk of bursting or failing.
9. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the common land is used by local people and is closely linked with the interests of public access. The land to be excavated is both registered common land and hard surfaced highway, with the trench line running along a length of Pentreath Lane and a short length of the adjoining Kynance Terrace. The application plan shows the temporary fencing crossing a part of the common used as a car park. Whilst the public has a right to access this part of the common on foot it is unlikely to be used for recreational purposes due to vehicles driving and parking over it. The impact of the works will therefore be limited to some temporary interruption of pedestrian use of Pentreath Lane, although adjacent alternative routes are available so inconvenience to pedestrians is likely to be minimal.
10. The permanent works will be underground with no new above surface features to interfere with access over the common. All temporary fencing will be removed once the works are completed, which is expected to be within approximately 3 weeks. I conclude that the works will not have a significant or lasting impact on the interests of the neighbourhood or public rights of access.

### ***Nature conservation***

11. NE was consulted about the application and advised that it had no comments to make. There is no evidence before me to indicate that the proposed works will harm nature conservation interests.

### ***Conservation of the landscape***

12. The application site lies within the South Coast Western section of the Cornwall Area of Outstanding Natural Beauty (AONB). The AONB Board was consulted about the application but did not comment. Despite its AONB status the site is public highway running through an urbanised area of The Lizard village. A number of buildings lie to the south of the highway and land immediately to the north is used as a car park. The permanent works will be wholly underground and the land will be re-instated on completion of the works, which can be ensured by attaching a suitable condition to the consent. I consider that the visual impact on the already urbanised landscape will be limited and short term and I am satisfied that the natural beauty of the wider AONB will be conserved.

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<sup>2</sup>Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

### **Archaeological remains and features of historic interest**

13. Historic England and Cornwall Council's Strategic Historic Environment Service were consulted by the applicant but did not comment. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

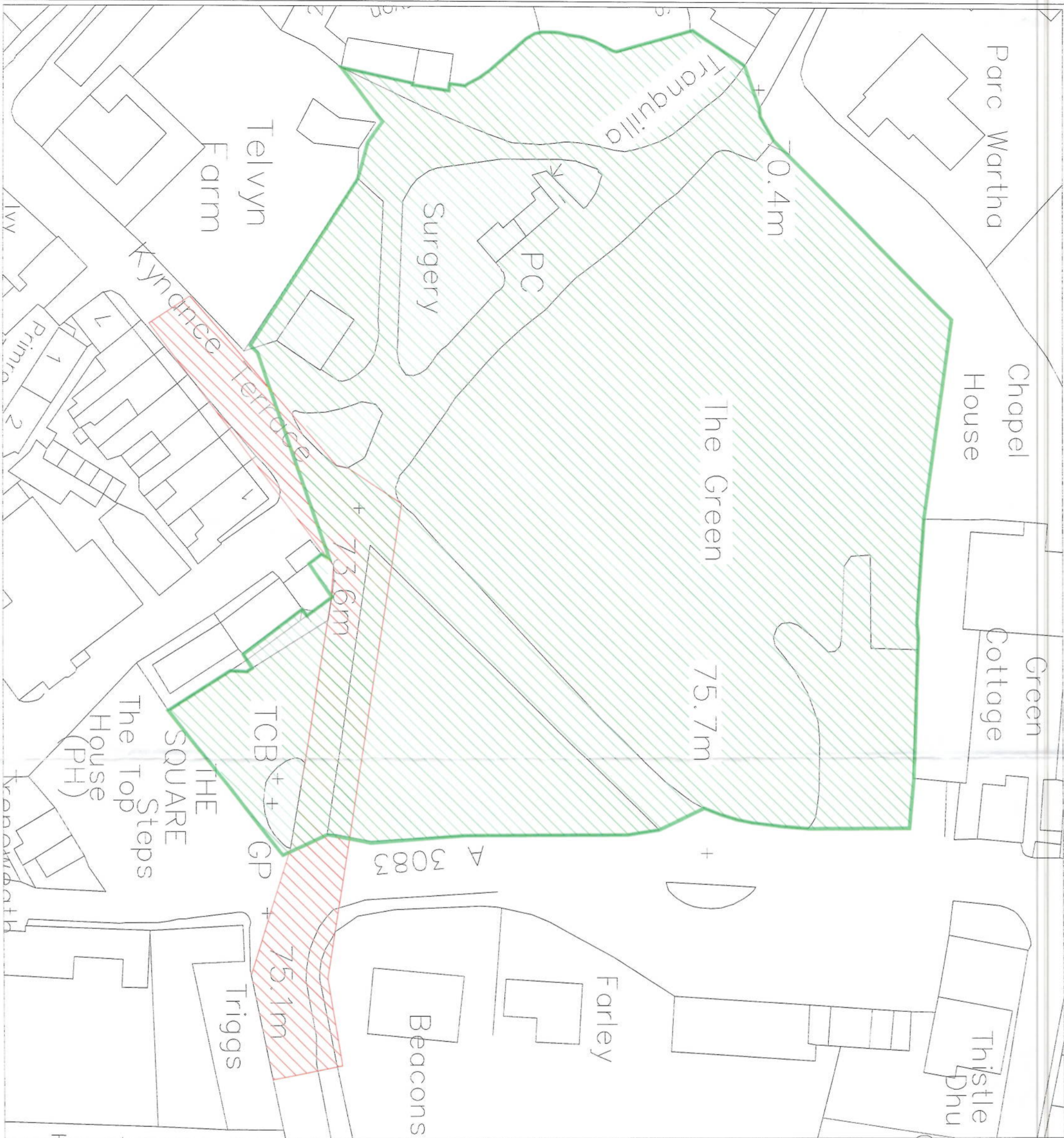
### **Other relevant matters**

14. The works are proposed to maintain the integrity of the local sewerage system. Defra's policy guidance advises that that *"works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service to local residents and businesses..... consent under section 38 may be appropriate where the works are of temporary duration (such as a worksite), where the works will be installed underground (such as a pipeline or pumping station), or where their physical presence would be so slight as to cause negligible impact on the land in question (such as a control booth or manhole), and the proposals ensure the full restoration of the land affected and confer a public benefit"*. I am satisfied that the works accord with this policy objective.

### **Conclusion**

15. I conclude that the proposed works will not significantly harm the interests set out in paragraph 6 above and will confer a public benefit by maintaining the local sewerage infrastructure. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

**Richard Holland**



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Horizontal Datum:  
 Vertical Datum:  
 Units: Metres



## Hellaracher The Lizard

Scale  
 1:250



### Legend

Key to Line Types	Abbreviations
Surface Water Sewer	VC
Foul Water Sewer	AC
Surface Water Sewer (CCTV survey complete)	PF
Foul Water Sewer (CCTV survey complete)	SC
Surface Water Sewer (assumed route)	SK
Foul Water Sewer (assumed route)	DK
Rising Main	DM
Rising Main (assumed route)	DP
Surface Water Sewer	GP
Foul Water Sewer (assumed route)	GP
Surface Water Sewer	GP
Foul Water Sewer (assumed route)	GP
Rising Main	GP
Rising Main (assumed route)	GP

Quantity Reference	N/A
Date Drawn	10/10/2018
Drawn By	LDDodge

Prepared for:  
 South West Water  
 Riston Lane  
 Exeter  
 EX2 7JK

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