
Application Decision

by Richard Holland

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

Decision date: 21 November 2019

Application Ref: COM/3237982

Polhigey Moor, Cornwall

Register Unit No: CL 455

Commons Registration Authority: Cornwall Council

- The application, dated 18 September 2019, 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 six weeks duration comprise the installation of a replacement pumped sewer main, site compound and temporary fence within a working area of 2191 m².
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Decision

1. Consent is granted for the works in accordance with the application dated 18 September 2019 and accompanying plans, subject to the following conditions:-
 - i. the works shall begin no later than three years from the date of this decision; and
 - ii. all fencing shall be removed and the common shall be fully restored within one month from the completion of the works.
2. For the purposes of identification only the location of the works is shown outlined in red within the common land boundary outlined in green on the attached plan.

Preliminary Matters

3. I have had regard to Defra's Common Land Consents Policy¹ 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 representation made by the Open Spaces Society (OSS).
6. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
 - 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;

¹ Common Land Consents Policy (Defra November 2015)

- c. the public interest;² and
- d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

- 7. The common has no known owner and there are no rights registered over the area of common impacted by the works. I am satisfied that the interests of those occupying or having rights over the land is not at issue.

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

- 8. The interests of the neighbourhood test relates to whether the works will unacceptably interfere with the way the land is used by local people and is closely linked with public rights of access. The works are needed to replace an existing pumped sewer pipe that is no longer working effectively and liable to bursts or failure. Temporary heras fencing is needed for site safety and security. The work site includes welfare facilities for staff and an area for the storage of materials and equipment.
- 9. The works will restrict access to part of the common for a duration of six weeks and I accept that fencing is needed to meet health and safety requirements. Given that all above ground works will be removed after six weeks, I am satisfied that the works will not have a significant or lasting impact on the common and will not harm the interests of the neighbourhood or public rights of access.

Nature conservation and conservation of the landscape

- 10. The trench for the replacement pipeline will be excavated mechanically, then backfilled and the ground reinstated. Vegetation will be trimmed/stripped along the working area so that the trench can be excavated and an ecology survey will be undertaken to ensure that wildlife is not disturbed. Upon completion of the works the compound will be stripped and removed and the surface restored.
- 11. Natural England confirmed that it would not be commenting on the application. I am satisfied, based on the evidence before, that there is nothing to indicate that the works will impact on nature conservation interests. The permanent works will be underground, the temporary fencing removed and the common reinstated upon completion of the work. I conclude that the works will conserve the landscape in the long term.

Archaeological remains and features of historic interest

- 12. There is no evidence before me to indicate that the works will harm archaeological remains and features of historic interest.

Conclusion

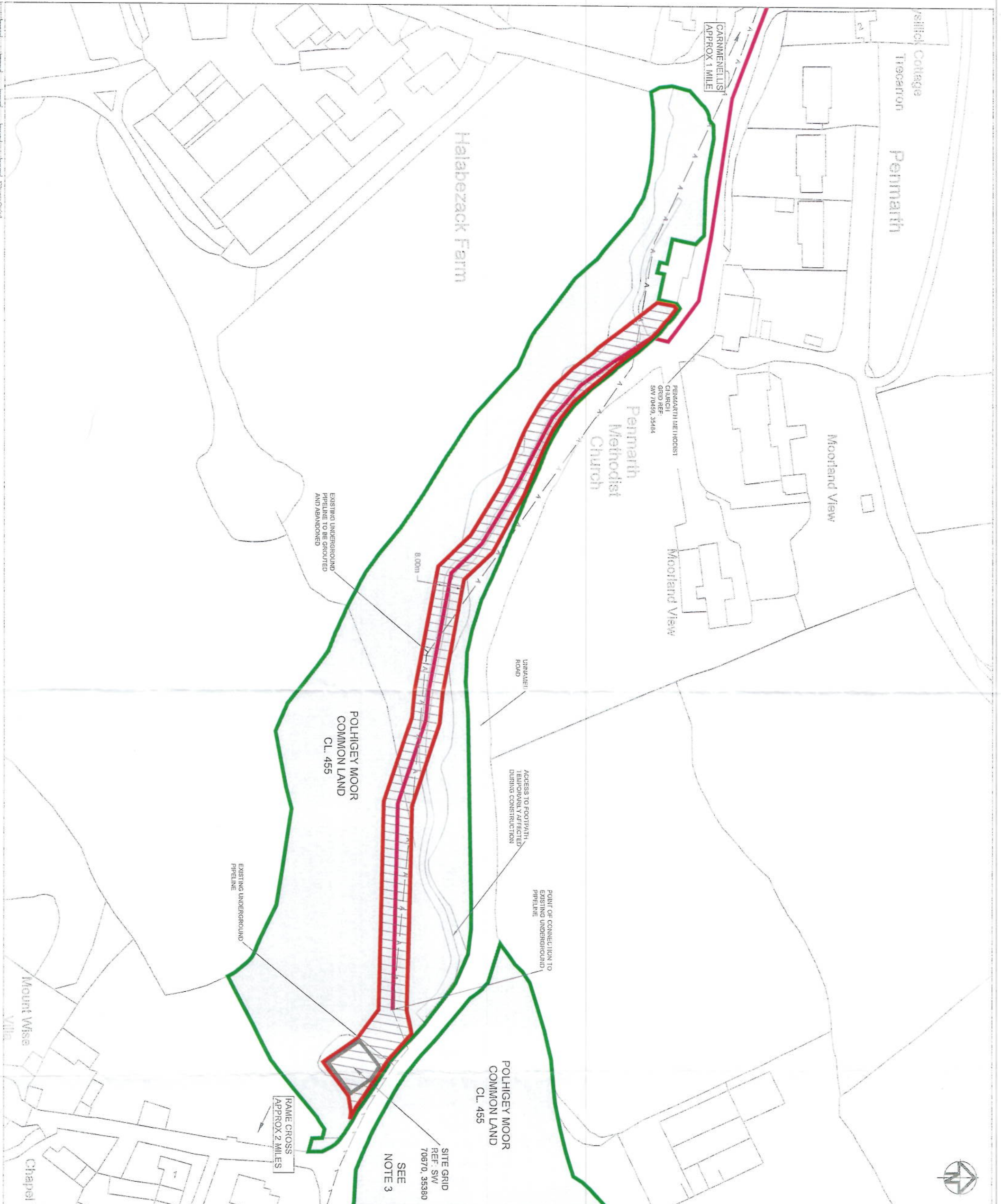
- 13. Defra's policy guidance advises that *"works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to provide or improve the public service 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*

²Section 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.

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 proposed works accord with this policy objective.

14. I conclude that the proposed works will not have a significant or lasting impact or harm the interests set out in paragraph 6 above and will confer a public benefit. Consent is therefore granted for the works subject to the conditions set out in paragraph 1.

Richard Holland



1. ALL DIMENSIONS IN METRES UNLESS OTHERWISE STATED
2. ALL LEVELS IN METRES RELATIVE TO ORDNANCE DATUM (MSL).
3. EXISTING UNDERGROUND PIPELINES ARE SHOWN IN THIS AREA

LEGEND

- ROUTE OF NEW UNDERGROUND PIPELINE
- EXISTING UNDERGROUND PIPELINE TO BE REPAIRED
- EXISTING UNDERGROUND PIPELINE TO BE GROUNDED & ABANDONED
- WORKING AREA WITHIN POLHIGEY MOOR COMMON LAND REQUIRED DURING CONSTRUCTION (2191m² 3.4% OF TOTAL)
- AREA OF POLHIGEY MOOR COMMON LAND (64759m²)
- AREA OF TEMPORARILY ABANDONED ROAD

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S2	ISSUED FOR INFORMATION	

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ARCADIS

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 POLHIGEY RISING MAIN PARTIAL REPLACEMENT PENMARATH, CORNWALL

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 COMMONS ACT CONSENT

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