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# Application Decision

by **Richard Holland**

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

Decision date: 7 December 2018

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## Application Ref: COM 3210368

### Pill Moor or Shirehall Moor, Lostwithiel, Cornwall

Register Unit No: CL349

Commons Registration Authority: Cornwall Council.

- The application, dated 24 August 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 20 weeks duration to stabilise the west bank of the River Fowey at two locations comprise:
    - (i) bank stabilisation with angular rock armour and associated infilling;
    - (ii) slight realignment of the riverside access track; and
    - (iii) approximately 13.8 metres of temporary 2 metre high Heras security/safety fencing to be in place during the period of works.
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## Decision

1. Consent is granted for the works in accordance with the application dated 24 August 2018 and accompanying plan, subject to the following conditions:-
  - (i) the works shall begin within 3 years of the date of this decision;
  - (ii) all temporary fencing shall be removed upon completion of the works;
  - (iii) 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 unbroken red lines 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. Planning permission for stabilisation of the existing riverbank and protection to the existing final discharge outfall was granted by Cornwall Council (the Council) on 25 September 2018 (Application PA18/07214).
5. This application has been determined solely on the basis of written evidence.

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

6. I have taken account of the representation made by the Open Spaces Society (OSS), which does not object to the application.
7. 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;
  - 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***

8. The land is owned by Lostwithiel Town Council (the Council), which has granted South West Water a right of access over the land to the Lostwithiel Sewage Treatment Works (STW) situated on the common close to the River Fowey. Access is via an existing track. The works are proposed to halt riverbank erosion at two points which is threatening both the access track and the STW. The Council supports the application and considers maintaining access to the STW to be of critical importance to the town. I am satisfied that the works are in the interests of the land owner.
9. The common land register records one right to graze 30 cattle over the common. The applicant has said that the rights holder recorded in the register has passed away and that the right is no longer exercised. There is no evidence before me to suggest that the works will harm the interests of those having rights over the land.

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

10. The common runs north to south and is bordered by a railway line to the west and the River Fowey to the east. The sole access point onto the common for both pedestrians and vehicles is at the northern tip where the common narrows to little more than the width of the access track. The public use of the common appears to be for general recreational access. The access track runs southwards for approximately 300 metres from the northern tip to the STW, where it ends. The common then extends beyond the STW for a further 600 metres or so.
11. 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 interests of public access. The works will affect two areas of riverbank; one approximately half way between the northern tip and the STW and one adjacent to the STW. The application plan shows a 'temporary working area' around the entire length of the access track, which indicates where extra health and safety restrictions will apply to contractors but does not represent the full extent of the area from which the public will be temporarily excluded. The applicant has confirmed that the public will be excluded from the whole of the common by means of the temporary security/safety fencing which is to be erected across the northern tip. As the works are likely to take around 20 weeks I conclude that the exclusion will significantly harm local and public access and I consider below whether temporarily excluding access to the whole common is warranted.
12. Any public access kept open during the works could not extend past the STW which, together with the adjacent works area, will extend across the whole width of the common at that point and would physically block access southwards. Any public access onto the common during the works would therefore be limited to the land north of the STW. However, this consists of land to the east of the access track that will be trapped between the temporary working area and the river and land to the west of the track that is too narrow to safely provide for simultaneous public access and works

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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.

vehicle use. Having regard to the above, I conclude that given the shape of the common, the position of the only access point and the location of the works it is reasonable on public health and safety grounds to prevent public access to the whole of the common even though this means access will be prevented to a large area that will be unaffected by the works.

13. The application is made by South West Water to protect the track it uses to access the STW. However, the works will also benefit local people and the public who make use of the track. I therefore consider the works to be in the long term interests of the neighbourhood and public rights of access.

### ***Nature conservation***

14. The works location lies within the Upper Fowey and Point Pill Marine Conservation Zone. Natural England confirmed that it was consulted about the application but made no comments about the proposals. There is no evidence before me to indicate that stabilising the river bank to halt erosion in the way proposed will either benefit or harm nature conservation interests. However, continued erosion of the riverbank could compromise the integrity of the STW and risk contamination of the river with sewage. I conclude that prevention of such contamination is clearly in the interests of nature conservation.

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

15. The use of angular rock armour will change the riverside landscape but it will also protect the landscape from changes caused by erosion. In weighing up these competing factors I consider that the visual impact of the rock armour will not be unduly intrusive and may soften over time should, for example, plants grow over it. On balance, I consider that the impact of the works on the landscape will probably be neutral.

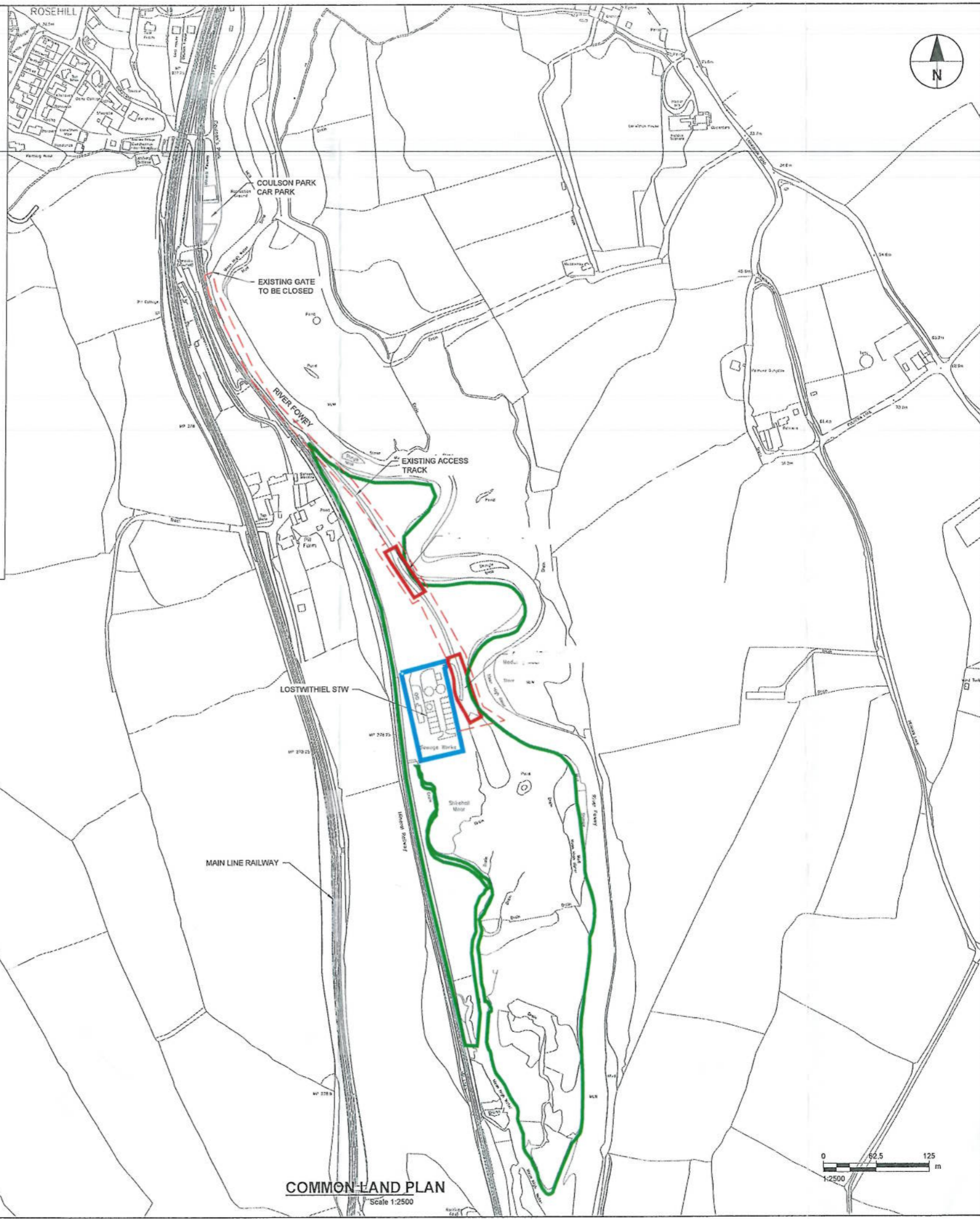
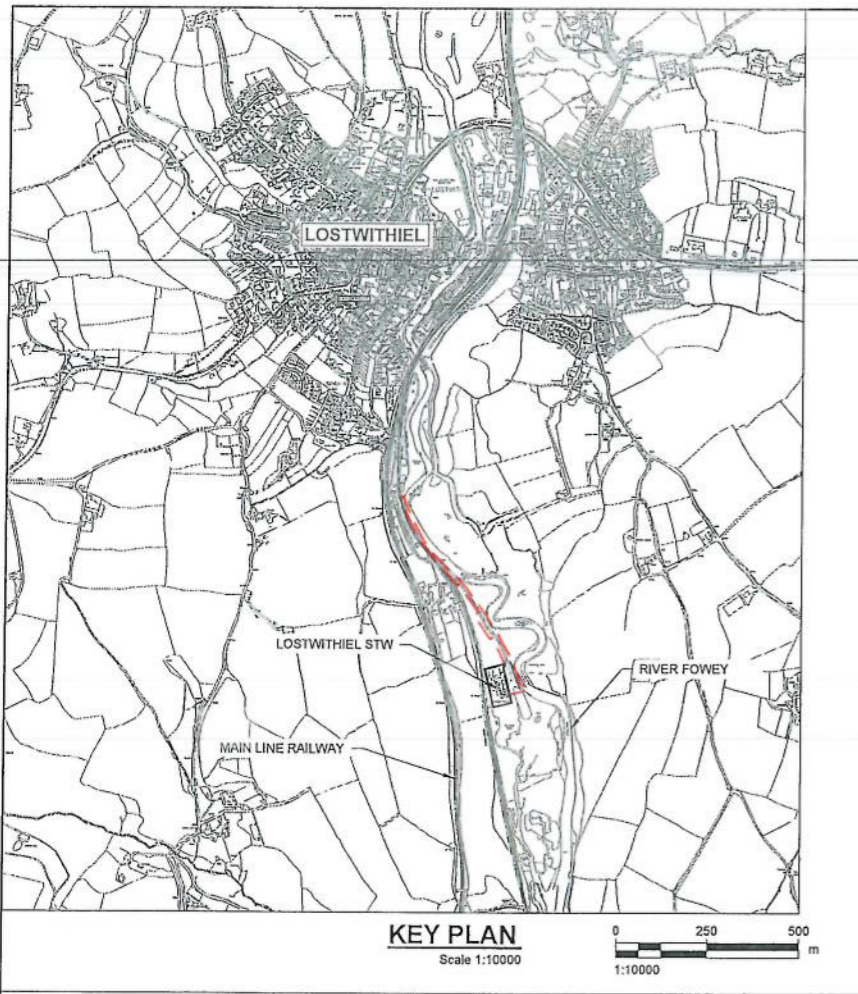
### ***Archaeological remains and features of historic interest***

16. There is no evidence before me to indicate that the proposed works will harm any archaeological remains or features of historic interest.

### **Conclusion**

17. I consider that while the proposed works will temporarily prevent public access this harm is outweighed by the need to halt river erosion and thus protect the STW and the access track. Safeguarding the track is, in any case, in the long term interests of public access. Furthermore, the works will benefit nature conservation by addressing the threat of potential sewage contamination of the River Fowey. As the works will not harm any of the other interests set out in paragraph 7 above I conclude that consent should be granted subject to the conditions set out in paragraph 1.

**Richard Holland**



- LAND OWNED BY APPLICANT
- PERMANENT WORKS AREA
- TEMPORARY WORKING AREA - RESTRICTED ACCESS
- PILL MOOR (ALSO CALLED SHIREHALL MOOR) CL349

**PROJECT MANAGEMENT INITIALS**

JL	AW	AM
DESIGNER	CHECKED	APPROVED

**ISSUE/REVISION**

NO	DATE	DESCRIPTION
B	24.08.17	UPDATED WITH WORKING AREA
A	14.08.17	INITIAL ISSUE

**KEY PLAN**

PROJECT NUMBER  
60479025

SHEET TITLE  
COMMON LAND APPLICATION PLAN

SHEET NUMBER  
60479025-9006