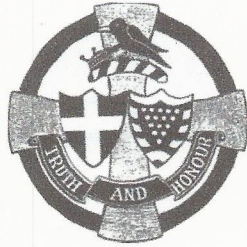


Breage Parish Council
Praa Green
Policies & Procedures



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Praa Green is an integral part of the community and, as such, should provide its residents with a focal point around which they can live a peaceful and friendly existence.

This publication is designed to improve the enjoyment of this unique and special place, ensuring we all understand how it came to be and how it must be looked after and respected so that a lasting legacy can be left for generations to come.

This is not a legal document, and nothing in it is intended to be given as legal opinion or over-ride any law, acts or byelaws. All the references are drawn from primary legislation or regulations made by lawful authorities, or to be published guidance issued by specialists in the field. Practical directions issued by the Parish Council are made within the powers given to it in law by various acts of Parliament and Statutory Instruments, and as the owner of the land on behalf of the wider community.

Note: This document is published on the Parish website (www.breageparishcouncil.com) and copies may be obtained on application to the Parish Council through its Clerk. (Office telephone number 01326 574781 e-mail breageparishcouncil@btconnect.com)

1. Map of Praa Green perimeter

Perimeter of Praa Green. See Appendix V.
For tracks and paths See appendix II.

Source: Drawn copy extracted from Land Registry title deed VG 621 Plan
Provisional Register Map Sheet number 18A 1st edition Commons registration Act 1965
The County of Cornwall.

2. History and background

Breage has the remarkable privilege of having the largest registered Green in the county, approximately 20 acres, 7.197 Ha. Set in a magnificent coastal location it encompasses the South West Coastal footpath and provides sea and coastal views along its entire length.

The full details of the history of the Green are available from the Parish Clerk.

The Green was registered to Breage Parish Council as owner by (the then) Cornwall County Council as the Commons Registration Authority in August 2002.

3. Definition of Village Greens

Village Greens are defined in the Commons Registration Act, 1965 (s.22) as amended by The Countryside and Rights of Way Act, 2000 (s.98) as: "land ... on which for not less than twenty years a significant number of the inhabitants of any Locality, or of any neighborhood within a locality, have indulged in lawful sports and pastimes as of right, and either (a) continue to do so, or (b) have ceased to do so for not more than such period as may be prescribed.

Village Greens are protected by the Inclosure Act, 1857 (s.12) and the Commons Act, 1876 (s.29). Section 12 makes it a criminal offence to do any act, which injures a green or interrupts its use as a place for exercise and recreation. Section 29 also makes it an offence to permanently encroach upon or 'inclose' a green, or to build upon or disturb the soil of a green otherwise than with a view to its better enjoyment.

It is not possible to give consent to do any works that contravene this legislation; as to give such approval would be condoning a criminal offence.

On the 6th January 1998 Breage Parish Council confirmed byelaws for the control and management of The Green that further emphasised the protected nature of this special place. These byelaws continue in force today, as confirmed under the authority of the Secretary of State in 1998, and are available by contacting Breage Parish Clerk 01326 574781

4. Legislation and guidance

The following is a list of the most common legislation that exists for the protection and rights that cover Village Greens;

- The Inclosure Acts of 1845 and 1857
- The Commons Acts of 1876, 1899 & 2006
- The Open Spaces Act, 1906
- The Acquisition of Land Act, 1981
- The Law of Property Act, 1925
- Commons Registration Act, 1965
- The Countryside and Rights of Way Act, 2000
- Various Local Government Acts
- Bye-Laws for the Regulation of Praa Green, 1998

Guidance has also been issued by Department for Environment, Food and Rural Affairs (DEFRA):

- Management and protection of registered town and village greens January 2010
- Vehicular access across Common Land and Town or Village Greens: Non-Statutory Guidance Note October 2007
- Both are available at www.defra.gov.uk.
- Advice is also available from the Open Spaces Society, to which the Parish Council belongs

5. Responsibilities

The Green is owned and administered by the Parish Council, which is responsible for its maintenance, protection and upkeep. Any rulings or actions will be made by the Council in accordance with legislation and published guidance from authoritative bodies such as DEFRA.

It is the responsibility of the owners of property fronting directly onto the Village Green to check their Deeds as to the boundary of their property to ensure that no items such as flowerbeds, shrubs, hedges, nameplates, or lighting columns extend beyond it.

Some property owners, or their predecessors, have laid out private access tracks to service their homes that front onto The Green. These routes have existed for many decades, and the evolved right to use them for private access is known as a 'prescriptive right', which is protected in law. There is no public right of vehicle access. These rights were also established before The Green became a registered green. As custodians on behalf of the community the Parish Council must ensure that

The Green is protected against encroachment, damage, and uses other than those consistent with its normal enjoyment.

6. Lawful use

Whilst not exhaustive, the following is a list of lawful and prohibited uses of a Village Green.

Lawful uses would include:

- Walking across it with or without a dog.
- Playing sports and games.
- Village fêtes (with the prior permission of the Parish Council – see Appendix IV).
- Public gatherings for entertainment (with the prior permission of the Parish Council – See Appendix IV).
- Use of existing paths for access/egress on foot.
- Use of existing prescriptive rights of access that cross The Green with a vehicle.

Prohibited uses include:

- Any physical alterations to The Green.
- Fencing of The Green or otherwise making it inaccessible to the public.
- Willful damage (i.e. when a person was aware of the risk of damage) e.g. by
- Vehicles, bicycles or horses; or the storage/siting of building materials or skips
- Unless with the permission of the Parish Council and with no alternative within the adjacent property boundary.
- Planting of trees except by the Parish Council.
- The pruning or cutting down of trees except by the Parish Council.
- The building or introduction of any structure (this includes even small things such as steps, bollards, posts, marker stones or similar) except by the Parish Council.
- The driving of a vehicle across grassed areas (see Appendix I – Common Questions and Answers).
- Parking of a vehicle on the grass or tracks unless with permission from the Parish Council (see Appendix I – Common Questions and Answers).
- Camping or caravanning (see Appendix I – Common Questions and Answers).

A degree of common sense must prevail in interpreting the possibilities for The Green's use. However, the overriding factor must be The Green's protection against damage, maintaining access and enjoyment for all in the neighborhood and guarding against changes of use.

The Parish Council will be pleased to advise anyone on The Green's use. You should make contact with the Parish Council through its Clerk or by contacting any of the Councillors.

7. Enforcement

Where The Green has been unlawfully used or damaged the Parish Council can take actions available to it in law to both seek remedy of the damage or a cessation of the unlawful use.

Those responsible will be expected to pay all subsequent costs in relation to The Green's repair or reinstatement, and works will be subject to timescales required by the Parish Council.

Should the Council have to commission its own works in relation to repairs or reinstatement all costs incurred will be charged to those responsible for the damage.

8. Public Rights of Way

Not to be confused with rights of access over The Green generally (see Section 9 below), public rights of way are those footpaths, bridleways and bye-ways that exist over private land for the use of everyone. Private access for properties is by separate right or permission.

9. Rights of access to properties and land

There is a distinction here between old and new rights. In the past, where owners already had the right (i.e. there had been an access way used by vehicles for many years), Parish Councils gave consent (in a formal document, not just a letter) to owners selling their properties. This was not a legal right, as such rights -condoning the criminal offence of taking vehicles on to Greens – could not be created. It was just consent to the use so that the Parish Council could not take action in future against the owner. It goes without saying that any access way should have been in use and already constructed. Now, where there is no long-term use there is not even the expectation that a right of access could exist for vehicular use and the Parish Council cannot create it. Use on foot only is a different matter- this use is already part of the public right to use The Green and so does not need to be expressly created. Creating a surface for foot use only - e.g. to stop mud being carried into a house, could be contemplated if the Parish Council was satisfied that there was no encroachment, i.e. no interference with the right of the public to use the surface as part of The Green or a spoiling of their enjoyment. There could be no exclusion of the public from this path and the Parish Council would, in effect, only be giving licence to use the path subject to it being properly maintained by those benefiting from it.

Appendix II shows the existing Rights of Access recognised by the Parish Council.

10. Maintenance

The Parish Council maintains all parts of The Green, whether grassed, earth or surfaced with the exception of private access tracks as explained in Section 5 'Responsibilities' above. The Parish Council will establish and maintain a programme of Planned Maintenance for The Green and fixed assets set out upon it. Whilst grassed areas are cut and seeded as required, other areas may be subject to repair or replacement from time to time dependent on the degree of erosion occurring. The Parish Council also works in partnership with the Cornwall Council, in protecting the Conservation Area and its essential biodiversity, many examples of which can be found on The Green. Breage Parish Council will take all decisions relating to The Green's maintenance and repair in the first instance, before any works are carried out.

11. Repairing hard surfaces

Background:

'Hard surfaces' are not naturally occurring, and have evolved as such over many years. Although varying in their nature they need to be maintained in a condition, which allows for safe use by people, animals and (where permitted) vehicles. It is not possible to create new hard surfaces, or extend existing ones, as this would amount to unlawful damage.

Hard surfaces of The Green generally fall into one of the following 3 categories:

- 1 Parking areas for use of general public while using local amenities (e.g. Basketball court).
- 2 Footpaths which are not overseen by Cornwall Council (as Highways Authority) but which may be used by the general public as well as residents.
- 3 Private tracks, crossings & footpaths, which are essentially vehicular and pedestrian accesses for one or more properties.
- 4 The map in Appendix II shows where the hard surfaces are on The Green. If clarification is required please contact the Clerk to the Council.

Maintenance:

Categories 1 & 2: Maintenance to minimum standards and costs rest with the Parish Council. Works to any higher specification required by property owners benefiting from these public facilities will be at the expense of those owners.

Category 3: Maintenance and apportionment of costs rest with the lawful users served by the tracks. Appendix III details the standards for maintenance. Should any areas become unsafe for pedestrians (exercising their right to enjoy all parts of The Green) then the Parish Council will draw the attention of those responsible to the situation and require appropriate remedial action within a specified time. If necessary the Parish Council will consider stepping in to make safe and recharge those responsible with the costs incurred.

It remains unlawful for any grassed areas of The Green to be damaged or lost due to any works.

12. Inspections

Breage Parish Council will inspect The Green at least annually, but otherwise as required, to determine its condition and that of its assets. The Planned Maintenance programme will be reviewed against these inspections. Any necessary works that may be required will be prioritised with resources made available. The results of such inspections will be formally recorded.

13. Protection of trees

All trees on The Green are in the ownership of the Breage Parish Council and protected by being in the Conservation Area. They must not be pruned or cut down without obtaining permission from Breage Parish Council. Subject to planning controls Breage Parish Council has the right to make decisions on the moving and replanting of trees and other plants on The Green, although it will seek to consult with Cornwall Council and others as necessary.

14. Alterations or Change of Use

Any requests to alter or make new use of The Green should first be referred to Breage Parish Council. The Parish Council has limited rights and may only sanction minor alterations that do not undermine the basic rule that no damage must be done,

and that any work must be for 'the better enjoyment' of users. The Commons Act, 2006 (s.16) sets out how changes of use and significant alterations are managed, with applications submitted to the Secretary of State (through the Planning Inspectorate). This may only be done by Breage Parish Council or Local Authority. To prevent the overall loss of Village Green space these circumstances will usually include a suitably sized replacement piece of land being exchanged for the intended area of Green concerned, for example to give access to a new development. Further guidance is available online at <http://www.planningportal.gov.uk/planning/countryside/commonland/forms>

15. Events on The Green

The Green has hosted many public events over the years, which draw visitors from far and wide. Protecting the fabric of The Green remains paramount, as is avoiding public nuisance to others. The Council's events management policy, designed to manage these issues, is at Appendix IV.

16. Outcome

Greens are part of our English/Cornish heritage and should be protected and enjoyed by everyone as much as possible, and especially by the residents of Breage Parish. We are all be proud of our Green and feel honoured to live and be a part of a community that has the good fortune to have one.

Appendix I. Common Questions and Answers

Question 1: Can vehicles drive over or park on Village Greens?

DEFRA's answer: Section 34 of the [Road Traffic Act 1988](#) makes it a criminal offence to drive over, or park on land (including a Green) not forming part of a road without lawful authority to do so. In this context 'lawful authority' includes either the lawful permission of the owner of the land or a private vehicular right. Those who have lawful permission, a private right or some other form of lawful authority may drive over, or park on, a Green without committing an offence under the 1988 Act. Furthermore it is not an offence under the 1988 Act to drive on a Green within 15 yards of a public road solely for the purposes of parking on the Green.

[Note: the hard standing in front of the Basketball court is part of the Village Green. It was created by Breage Parish Council for the use of visitors to the Green. Lawful permission has been given by Breage Parish Council for visitors to park there *whilst visiting the basketball court* (All other parking is therefore unlawful.)

However, irrespective of whether an offence has been committed under the 1988 Act, driving over or parking on a Green may still be an offence under section 12 of the 1857 Act or section 29 of the 1876 Act. For example, if a court adopted a strict interpretation of section 12 of the 1857 Act, any interruption of the use or enjoyment of a Green would be an offence under that provision. However, in DEFRA's view, occasional driving of private vehicles over a Green in exercise of a private right of way, for the purposes of parking on private land beyond the boundary of the Green, is unlikely to be viewed by a court as giving rise to an offence under the 1857 and 1876 Acts, if the interference with recreational enjoyment is very brief. In DEFRA's

view, a court is more likely to find that vehicular use contravenes section 12 or section 29:

- If the use is very frequent
- If the use is by very large or slow moving vehicles
- If the vehicle is parked on the Green; or
- If damage is caused to the Green by the vehicular use

Further information regarding vehicular access over Greens can be found in DEFRA's nonstatutory guidance note entitled 'Vehicular access across Common Land and Town or Village Greens' at www.defra.gov.uk

Question 2: Can you camp or caravan on a Village Green?

Open Green Spaces answer: Probably not - legally it has been generally assumed that camping is not a recreational pastime and that someone putting tents up or placing a caravan on a Village Green may stop other people from enjoying their right to recreation and exercise. Section 29 of the 1876 Act states that any 'enclosure.... or erection thereon', e.g. a tent or caravan, is deemed to be 'a public nuisance' i.e. it is an offence under the Act. A caravan would be deemed to be interfering with the rights (recreational) of others and would probably damage the surface – both offences under the 1876 Act. The owner also has powers in common law to remove a trespasser.

Question 3: Can you graze animals on a Village Green?

Open Green Spaces answer: The owner of the land or someone with rights to graze stock can do so, provided they do not stop people enjoying exercise or recreation. This might mean the Green, or part of it, is grazed for part of the year and people are put off use for that time. People who are likely to want to use that area in this time must be consulted and decisions made openly and widely known. Problems might follow if you needed to fence part or all of the Green to keep animals from straying - this would fall foul of s29 of the 1876 Act. Those with 'rights of common' to graze livestock are listed on the Register.

There is no right to graze stock on Praa Green.

Appendix II. Existing access tracks, paths and public rights of way

Map showing all the hard surfaces (i.e. tracks, paths and Basket Ball court parking area).

Breage Parish Council will maintain all tracks and steps on the Green. The orientation of the tracks will vary from time to time to distribute wear at the absolute discretion of Breage Parish Council. These cross Green tracks will be at a maximum track width of 3m.

Access from Praa Green via the Coastal slope steps and openings is the responsibility of Cornwall Council but will be coordinated via Breage Parish Council.

The South West Coastal footpath 54 passes through Praa Green and broadly keeps the sea to your left whilst going in a Westerly direction and where possible avoids the coastal slope in an attempt to minimise damage to the Marrin grass. Cornwall Council and the South West Footpath Association partner Breage Parish Council in maintaining this section of Footpath 54.

The Bye way open to all traffic (BOAT) 47 running from Praa Sands to Lesceave is maintained by Cornwall Council.

Appendix III. Maintenance of tracks across the Village Green

1 It is the duty of all lawful users of tracks across The Green to maintain their tracks to a minimum safe standard for pedestrians. As all parts of The Green must remain accessible at all times to pedestrians, if parts of The Green are damaged by vehicles (using tracks and causing potholes, or straying from the track line and damaging grass/turf for instance) then those parts are to be kept in good repair to permit safe use.

2 If the existing track surface is to be maintained by the lawful users for private vehicular access then pot holes arising are to be filled as necessary with a similar material in which the track has been constructed, this being road scalplings or Type 1 standard road material. Adjacent damaged grass/turf must also be reinstated.

3 Access tracks should be no wider than those that are in current use as detailed on the plan of The Green, and its legend, at Appendix II. Currently to provide access to the property known as Beech Croft on the attached Commons Registration Map but is now known as Sandways Lodge due to subsequent development.

4 The lawful users of any track are responsible for surface water drainage of the track.

5 The edges of tracks may be marked with large natural semi-permanent stones (in runs of up to 200m) to dissuade vehicles from leaving the tracks and driving onto the grass/turf. Any proposals to do so must first be approved by the Breage Parish Council, which will consider the exemptions available in Planning Inspectorate Guidance (see Section 6).

Appendix IV. Use of the Village Green for events

The Breage Parish Council is responsible for managing the use of the Praa Green for events, using the following policy as a guide:

1 All requests for use of Praa Green must be made in writing to the Clerk to the Council at least 2 months prior to any event-taking place.

2 Praa Green may only be booked by Breage residents or those with a close association with Breage Parish.

3 Praa Green may only be used for events open to the general public, and not for primary commercial (i.e. private sector or personal) gain.

4 All requests must detail the exact nature of the event to take place, likely levels of attendance, with car parking and welfare arrangements planned.

5 The Village Green and the safety or welfare of those attending is the responsibility of the user throughout the event and this includes:

a. Ensuring the event is properly supervised.

b. Ensuring that local residents are not troubled in any way (e.g. through rowdy behavior, loudspeakers, bright lights)

c. Ensuring that no damage takes place as a result of the event. If in the opinion of the Council any damage has been caused, then this will be rectified at the expense of the user.

d. Ensuring Public Liability Insurance (if required) is in place.

Praa Green – Policies & Procedures

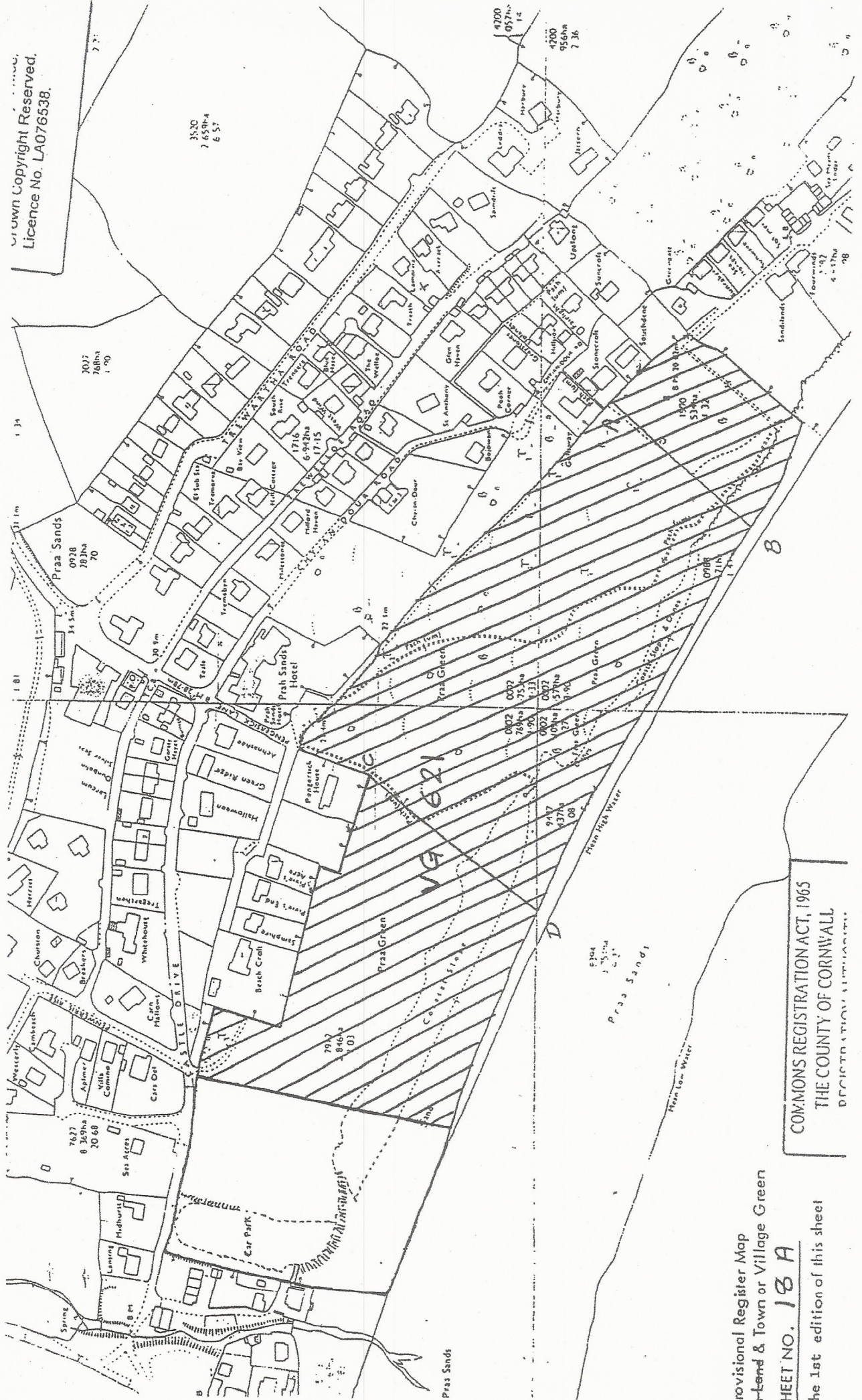
- e. Ensuring any Liquor or Public Entertainment Licence (if required) is in place.
- 6 No vehicles are allowed on the Village Green without the prior permission of the Council, which may impose specific conditions.
- 7 No overnight stays are permitted on the Village Green (no camping, no caravans). Everyone must leave Praa Green by 2200 at the latest.
- 8 No charge may be made by the user for any event on Praa Green without prior consent of the Parish Council.
- 9 All rubbish to be removed from the area immediately after the event.
- 10 Any pre-event work requested (e.g. grass cutting) will be charged.
- 11 Any post-event work (e.g. litter clearance) required will be charged.

A maximum of four (4) events per year will be permitted entirely at the discretion of the Breage Parish Council. These events will be primarily of a nature that will benefit the Community enterprises of the Parish. Nothing in this instruction permits or constitutes a permanent fixture on any part of the Green and the Green must be returned to its original state on completion.

Clarification of any of the details contained in this plan can be obtained from the Clerk to Breage Parish Council 01736 474781 Mobile 07767165077 or email breageparishcouncil@btconnect.com

January 2017. Breage Parish Council

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Provisional Register Map
Tend & Town or Village Green

SHEET NO. 13A

the 1st edition of this sheet

COMMONS REGISTRATION ACT, 1965
THE COUNTY OF CORNWALL
DISTRICT OF STANTON