

Friends of Molesey Hurst  
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Surrey County Council  
Commons Registration  
County Hall  
Kingston  
Surrey

7th October 2011

**Application to put Molesey Hurst (comprising Hurst Park, Hurst Meadows and Little Hurst Meadows) in East Molesey, Elmbridge, Surrey, on the Commons Register**

For the attention of Ms Helen Gilbert and County Council members of the  
Planning and Regulatory Committee

**An American poet on the commons of England**

I like your name; I like the way you keep  
Old thorns and brambles, broom and golden furze,  
And little footpaths, and your villagers,  
And woodbine bowers that are cool and deep.  
I like your prams where rosy children sleep;  
Your sand heaps and your tangled weeds and burs,  
Your skylarks, and all life that in you stirs,  
And all the lovely clouds that o'er you sweep.  
I like the way men use you, lying prone  
Upon your turf, or at some merry game  
Of ball, or taking kindly in your name  
The right of freemen. You have ever known  
The joy of life; the spirit of the free,  
And as you are so may you ever be.  
*Ingram Crockett*

Published in the  
*Journal of the Commons, Open Spaces and Footpaths  
Preservation Society*  
1927(1)

Dear sirs,

Please find herewith our application for commons registration of Molesey Hurst, East Molesey, Elmbridge, Surrey, comprising:

1. This document, to accompany Form 44
2. Evidence questionnaires from local residents and users of the area (re Section 7)
3. Documentation on ownership of some of the land in question (re Section 8)
4. Maps/aerial views of the land in question

## Section 7

### Justification for application to register the land as a town or village green

We have received to date a total of 129 forms completed by local people and users of the park, which are attached with this submission. These speak for themselves and identify a variety of lawful activities relating to recreation, leisure and sports pursued over periods of 20 years or more by residents enjoying Molesey Hurst; 112 are from residents of the KT8 area; 17 are from further afield.

To summarise, common themes emerge as follows:

Family games and activities	Jogging	Kite flying
Walking	Children's groups activities	Basketball
Walking dogs	Accessible for disabled and elderly	Birthday parties
Cycling	Bringing visitors	Observing insects
Socialising	Several generations	Nature walks with children
Tranquillity and wildlife	Pleasurable environment	Snow!
General enjoyment of Thames riverside	Freedom	Charity walks
Meeting friends	Peace and serenity	Natural world
Views	Varied river views	Public events
Exercise	Fishing	Sunbathing
Calm	Watching regattas	Hurst marker
Photography	Play	Local history
Picnics	Family gatherings	Launching small boats
Informal sports with friends	Health and wellbeing	Catching tiddlers
Exercising	Canoeing	Taking children out
Roaming	Water birds and feeding	Tree planting and growing
Wandering	Relaxation	Landscape
Events	Night sky	Therapeutic exercise
Children's playground	Reading	Running
Mooring for boats	Paddling	Archaeology
Safe area for all	Community events	Space and open-ness
English countryside	Wildlife watching	Swimming
Bird watching	Wildflowers and butterflies	Drawing and painting
		Quality of the environment

There are a number of reasons that have led local people to make this application. These relate to threats to the open accessibility of this land, the nature and character of the landscape, and how the public open space is currently enjoyed. Underlying this application is the value local people place on the park land, and their appreciation of the quality of the environment - largely due to how well Elmbridge Borough Council takes care of it. The specific threats are listed on our special website [www.friendsofmoleseyhurst.org.uk](http://www.friendsofmoleseyhurst.org.uk) We also list them below:

- proposals to lease off something like five acres for a cricket pitch and outfield for a period of at least thirty years; such a change of ownership could, over the years, bring pressures for fencing, buildings, access restrictions, changes in the management of the ground, changes to the use of the land and much else that cannot be foreseen
- identification in Surrey County Council's strategic minerals plan as a potential working zone (category 2); this is a rolling programme to ensure that Surrey has a bank of land to meet government targets for supply of minerals (sand and gravel)
- worrying precedents in the disposal of parcels of nearby public land to Molesey Boat Club for private use as boat storage and development of a rowing tank (as yet unbuilt); despite local objections, the transfer went ahead and some of this land has been fenced off
- likely cumulative impacts from changes, such as formal sports activity, that might over time alter the character of the landscape and the way it has been traditionally used by the public.

## Section 11

### Other information relating to the application: About Molesey Hurst

#### Designations

This area of land coincides with the designation by the local planning Authority, Elmbridge Borough Council, of Strategic Open Undeveloped Land (SOUL). It lies within the borough's Thames Policy Area, within the Flood Risk Zone (Environment Agency) and Hurst Meadows is a protected minerals site (Surrey County Council), category 2. The River Thames itself is a Site of Nature Conservation and the land lies within the buffer zone of the South West London Waterbodies Special Protection Area, a European designation.

#### Background and history

**Hurst** in English toponyms refers to a woodland hill or a grove, from Middle English *hyrst*.

#### Overview

Other than its period as Hurst Park race course, when Molesey Hurst was encircled by fencing from 1890 to 1960, this area has for centuries been open to and used by common people for many and varied public activities. In this regard, there may be a case to be made for the land having been common land from time immemorial, over and above this current application and the evidence supporting it.

It is an area of land lying upstream of Molesey Lock on the Surrey bank of the Thames with a frontage to the river of almost one mile in length. The land has been connected to the Middlesex bank by Hampton Ferry for hundreds of years. This public crossing to Molesey was in existence in 1519, and probably earlier. (The Twickenham Museum, the history centre for Twickenham and the Hamptons.) URL: [http://www.twickenham-museum.org.uk/tour\\_detail.asp?TourID=74](http://www.twickenham-museum.org.uk/tour_detail.asp?TourID=74)

It can claim to be one of England's oldest sporting venues, used in the 17th, 18th and 19th for prize fighting, duelling, cock fighting, archery, golf (1603), cricket (1733), horse and pony racing (called then the Hampton Races and Carnival) and other pursuits; and in the 20th century for horse racing (Hurst Park Racecourse, 1890 - 1960) and general lawful recreation and leisure (1962 to date, public open space), such as walking, informal sports, family activities, picnics, local charitable events, kite-flying, running, cycling, sunbathing, photography, bird-watching, sitting by the river, contemplation and much more. Boat owners and hire boats also use the land on the Surrey bank when mooring in passing (no more than 24 hrs). Garrick's Ait, although having a Middlesex address and postcode, is nevertheless in Elmbridge, Surrey, lying south of the County Boundary which runs down the centre of the Thames. The island's south-facing aspect overlooks Molesey Hurst and because there is no bridge, residents rely on being able to moor on the Surrey bank in order to come and go to and from their properties. Our evidence statements show that the majority of people enjoying the Hurst live in the KT8 area, though there are also many visitors regularly using the area who come from further afield. This is a country park that attracts wider use because of the River Thames, the Thames Path, and the variety and beauty of its landscape. It is also identified by council tax payers as the most popular park in Elmbridge.

#### Information and public spectacles of historic interest

Molesey Hurst was originally a common meadow belonging to the Manor of Molesey Matham, of the type known as 'Lammas land'; that is, whilst hay was made there during the spring and summer, it was thrown open to all who had common rights to graze their cattle from Lammas Day (1 August) until Candlemas Day (2 February). The earliest known mention of the Hurst is in 1249, when certain lands in West Molesey were transferred, including 'one meadow which lies by Herstegg'. (Thameside Molesey, 1989, Rowland GM Baker).

Records go back some way:

The passage over the Thames called Hampton Court Ferry, between Moulsey and Hampton Court and its ferry boat; and the like passage between West Mousley and Hampton Court and its ferry boat: being parcel of the manor of East Moulsey and demised to Lady Dorothy Edmondson, 1606, May 27, and afterwards to William Gwinne and William Loveing, 1635, June 11, and afterwards to James Clarke, 1667–8, Jan. 28, and 1676–7, March 12

The manor of East Moulsey, County Surrey, now parcel of the Honor of Hampton Court and formerly of the monastery of Marton [Merton], as demised to Nicholas Fortescue, 1692, Oct. 10, for 31 years and to James Clarke, 1667–8, Jan. 28, and 1676–7, March 12. (Treasury Calendar: April 1696, 21-25, Calendar of Treasury Books, Volume 11: 1696-1697)

URL: <http://www.british-history.ac.uk/report.aspx?compid=82707&strquery=moulsey>

From the early 1700s horses were raced on Moulsey Hurst and the area became the scene for many sporting encounters and public spectacles.

- 1763 - The Annual Register, Volume 6, edited by Edmund Burke. "A foot match was lately run on Moulsey Hurst by a shepherd against time. He was to run fifteen miles in an hour and a half and performed it in an hour and twenty-eight minutes." (This account appeared in several gentlemen's magazines of the day)
- May 1785 - the scene of an early hot air balloon ascent, about a year after the Montgolfier Brothers. Mr James Sadler of Oxford was the first Englishman who ascended in a balloon. "Thursday May 5th 1785, M. Sadler ascended with M. Windham from Moulsey Hurst, and after some dangerous gusts of wind, by which they had very near been blown out to sea, they landed at the conflux of the Thames and Medway." Annals of some remarkable aerial and alpine voyages. (Similar accounts appeared in several contemporary magazines)
- Autumn 1787 - a professional runner by the name of Powell ran a mile in 4 minutes and 3 seconds at Moulsey Hurst in preparation for an attempt on the 4 minute mile
- 1798 - a Mr Troward, a member of the Toxophilite Society, shot an arrow on a level piece of ground on Moulsey Hurst seventeen score (340 yards).
- 1802 - Proposal for lock to hold up the water over the shoals at Kenton hedges (Surrey Bank at Moulsey Hurst) and Sundbury Flatts above.
- April 1807 - Bare knuckle champion Tom Cribb fights and wins
- 1810 - Incidents, Marriages and Deaths reports two duels in one week on Moulsey Hurst; the first was over a disputed bet at Egham Races, when Captain Hants was severely wounded and his notorious opponent fled; the second mortally injured Mr G Payne.
- 1812 - October; pugilist Edward Turner kills his opponent after a fight lasting 90 minutes, was convicted of manslaughter, shown mercy and spent just two months in Newgate;
- 1815 - Molesey Lock opens on 9th August and brings greater activity and bigger crowds to the river and Hurst, which become popular and crowded on high days and holidays
- 1817 - The European Magazine and London Review, Volume 72, July to December. "Three pitched battles were fought at Moulsey Hurst on Tuesday last; the first between Reynolds and Church, in which the former was victorious; the second between Spring and Stringer, the former beat; the last between Purcell and H Lancaster, Purcell beat. The losing men were all so dreadfully beaten that they were incapable of walking off the ground; the usual assemblage of blacklegs were present."
- 1819 - Sporting Panorama by Isaac Robert Cruickshank: Going to a Fight. The Sporting World in All its Variety of Style and Costume along the Road from Hyde Park Corner to Moulsey Hurst, panorama of 42 scenes on a continuous strip view (joined), rolling into boxwood cylinder drum, coloured, approximately 62 x 3980mm. , Sherwood, Neely & Jones, September 1, 1819. A scarce panorama depicting the fashionable crowds en route from a drinking haunt near Hyde Park to Moulsey Hurst on the River Thames, to watch a prize fight.
- 1822 - James Ward fought several times at Moulsey Hurst, on one occasion admitting defeat when he in fact won - all bets were called off.

- 1823 - Barney Aaron and Tom Collins' famous boxing match (Boxing Register International Hall of Fame). Moulsey Hurst attracted the poor of London and by all accounts was a rough place, and as well as fist fights, there were robberies, beatings and worse (recorded *The Machinery of Crime in England*, 1834). Nevertheless, William the Fourth was often a spectator of the matches on Moulsey Hurst, according to J. Ewing Ritchie, 1858.
- The Hobart Town Gazette, 28 June 1826 - A disgraceful scene presented itself in the lower end of Campbell street on Tuesday afternoon. Two men named M'Coy and Woolhead, urged on by amateur spectators (of many of whom we should have expected better things than to countenance such a spectacle), made an unblushing attempt to revive the disgraceful exhibitions at Moulsey Hurst, now happily fallen into contempt in England. The bottle-holders, the ring preserved by person with whips, every thing in short was complete, and the combatants succeeded in bruising each other most effectually. The constables took ten of the principal performers into custody, who were bound over to keep the peace, and find sureties for their good behaviour.
- 1830s - Dickens describes Hampton Races at Moulsey Hurst in *Nicholas Nickleby*: "The little racecourse at Hampton was in the full tide and height of its gaiety; the sun high in the cloudless sky. Every gaudy colour that fluttered in the air from carriage seat and garish tent-top shone out in its gaudiest hues." This event, also called the Cockney Derby because of its appeal to London's commoners, took place in June and September, but primarily these occasions were a big day with a carnival and fair, and at its height Hampton Races was said to gather 100,000 visitors each day (*Thameside Molesey*, 1989, Rowland GM Baker). With the arrival of the railway, Moulsey Hurst was accessible by rail and steamer.
- 1867 - Molesey Regatta established; painted in 1874 by Alfred Sisley; postcards showing crowded Moulsey Bank and river activities dated 1907. Regatta held to date, every July, on Moulsey Hurst.
- 1887 - Hampton Races were held on Moulsey Hurst until this date; the June meeting was known as The Cockney Derby meeting.
- 1889 - The Hurst Park Syndicate was set up in 1889. Before this date, racing and other sporting activities (including cricket and prize-fighting) had taken place on the Hurst. The racecourse, however, was closed by the Jockey Club as dangerous for racing in 1887: the Syndicate then leased the land and over a period of years rebuilt the stands.
- 1890 - Moulsey Hurst is enclosed for Hurst Park Race Course, to the dismay of Hampton residents who objected to the ugly fencing off of the open view.
- 1925 - Molesey Bathing Station (located where there is now a slipway) and changing rooms. No admission fee but there was an attendant, opening times and rules against inappropriate behaviour and foul language. Closed in 1966 following a fire.

Information about flora dates back to the C19th and the reason given for this is the nature of the open common land: Moulsey Hurst features, with many species listed, in the *New London Flora - Handbook to the Botanical Localities of the Metropolitan Districts* (1877)

[http://www.archive.org/stream/newlondonfloraor00decrrich/newlondonfloraor00decrrich\\_djvu.txt](http://www.archive.org/stream/newlondonfloraor00decrrich/newlondonfloraor00decrrich_djvu.txt)

A rich and unusually varied habitat survives today on Hurst Meadows and excites botanists.

It is clear from the many references that in the past Moulsey Hurst was something of a byword for high days and holidays, perhaps sometimes of a rather disreputable nature - it even entered the folklore and the vernacular language of the day. It is also clear from these many references that Moulsey Hurst was a public place that attracted sometimes as many as 100,000 people a day - estimated numbers attending the popular Hampton Races and Carnival. With this weight of evidence from the past of its popularity and usage, we would submit that Molesey Hurst has been common land, freely accessed by everyone, for a period of at least three centuries notwithstanding the period of enclosure. We entrust this proof to your good judgment and consider it a strong case for putting Molesey Hurst as described on the Commons Register.

Yours sincerely,  
Jill Sanders

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## Appendix A

### Legal issues that have arisen in cases determined by the House of Lords

#### Lawful sports and pastimes

These activities do not need to be either organised sports or have a communal element. Activities such as dog walking, kite flying, solitary or family activities are sufficient to justify registration as long as there is an established pattern of use and it is not 'trivial and sporadic'.

#### As of right (Section 22(2) Commons Registration Act 1965)

Lord Hoffmann, in the Sunningwell (Oxfordshire) judgment in 1999 removed any subjective element from the decision making. It is now only necessary to provide evidence that the green has been used for lawful sports and pastimes

- without force
- without secrecy
- without permission.

In other words, people have used it as of right.

#### The inhabitants of any locality

The use of the land must be 'predominantly' by the local inhabitants.

#### Is there a particular and recognisable community or neighbourhood where most of the recreational users of the land live or work?

- can the boundaries of this locality be clearly shown on a map?
- locality cannot be defined only by reference to persons; it must be defined by reference to geography.

#### Commentary

The decision means that a successful application to register a village green will result in the inhabitants being able to continue to enjoy activities on the land in perpetuity and will almost certainly have the protection of section 29 of the Commons Act 1876 which will prevent any encroachment or enclosure.

#### The Commons Act 2006

<http://www.legislation.gov.uk/ukpga/2006/26/contents>

#### Protecting Village Greens

Under section 29 of the Commons Act 1876, together with section 12 of the Inclosure Act 1857, a person who:

1. encroaches on, or encloses a town or village green or a recreation ground allotted by an inclosure award, or
2. erects anything on, disturbs or interferes with that green or ground otherwise than for its better enjoyment for its proper purpose

may, on the information of any inhabitant of the parish in which the Green is situated, be summarily convicted by the magistrates' court and fined at level 1 on the standard scale.

An unusual village 'green' recently determined!

<http://www.oss.org.uk/land-saved-at-herbrand-walk-beach-east-sussex/>

ends