

More about registering Common Land, or Greens

Common land (a **common**) is land owned collectively or by one person, but over which other people have certain traditional rights, such as the right to pursue lawful recreation and leisure activities (town or village **Green**)

Information and guidance from the Open Spaces Society

Registration

To register land as a Green:

- We know from Surrey County Council that Molesey Hurst is not on the Commons Register. The many forms that local people will fill out to say how they use the area and for how long (at least 20 years) will be sent to Surrey County Council as a bundle, along with a covering application Form 44.

Preparing the application

As long as we have your evidence written and signed on the forms, to make our application to have Molesey Hurst put on the commons register, we then have to:

- show the area on a map and the locality or neighbourhood in which those using the green 'as of right' live.
- show that a significant number of those people who use the land are local people.
- show that those using the green have done so without permission, without being stopped or seeing notices which stop them, and without being secretive about it, and that between them they have done this for a continuous period of 20 years.
- For this we need as many people as possible to describe how they have used Molesey Hurst, what kind of recreation, leisure, sports, past-times they have pursued there, and to date and sign, with your address because locality is essential.

Submitting the application

- We will submit all the forms when we make the application to Surrey County Council, our commons registration authority which will determine it.
- Surrey County Council will check it is in order and will then advertise it and receive any objections.
- If there are any objections, the authority may hold an independent hearing. Surrey informs us this will be at a Planning and Regulatory Committee meeting of County Councillors. If it does resolve to register the land as a Green, this should protect it from development and local people will have the right to continue to enjoy the land for informal recreation.

How the land is protected once it becomes a Green

If we prove that local people have used the land without secrecy, force or permission for at least 20 years for lawful recreation and leisure, Surrey County Council will be able to register the land as new Green. This will protect it from development for ever and preserve it for use by local people.

How long does the process take?

Variable length of time.

How much evidence do we need to give?

As much as possible, but quality is more important than quantity.

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/>

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 also lies within the borough's Thames Policy Area, within the Flood Risk Zones (Environment Agency) and it is a potential minerals zone

(Surrey County Council) for sand and gravel. Additionally, it is in the buffer zone of the South West London Water Bodies Special Protection Area (a European designation for nature conservation); and the River Thames itself is a nature conservation site of regional importance.

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)