

Save Wimbledon Park!

Notes on the sale of the freehold of the golf club to the All England in 1993.

Summary

The golf course is part of the Wimbledon Park Open Space, the heart of Capability Brown's Park, never built upon. When Merton decided to sell in 1993, they committed to maintain its open aspect. Both Merton and the All England assured the public that there would be no development, formalised in covenants that the land would not be used except for leisure, recreation and open space, nor built upon except as ancillary to recreation or open space use.

The covenants were given to Merton as the owner of the Lake and Park, which they hold under a trust for the public. Merton must enforce the covenant to protect the interests of the public and to honour their 1993 commitment.

The All England now propose a covered stadium to seat 8,000, 10 other buildings, 38 purpose built tennis courts, 2 enormous entrance zones and 9.4kms of roads all for their private championship and tournament use.

The proposed use and the buildings would all breach the covenants. The covenants do not prevent some reasonable leisure, recreational or open space use of the land, and the All England must come up with suitable alternatives.

Background - Merton Council

27 April 1993 Merton Policy and Resources Committee

Resolved to declare the freehold of the Golf course surplus to requirements and sell it "*subject to ... access available to public around the lake at the earliest date ... covenants preventing the use of the land otherwise than for leisure or recreation purposes or as an open space and covenants preventing any building except ancillary.*" Merton made a ... "*Commitment to the open aspect of the Golf Course in the event of any disposal*".

12 August 1993 Sales particulars issued by Merton to prospective buyers including the All England

"The conveyance will contain (a) a covenant preventing the use of the land otherwise than for leisure or recreation purposes or as open space, (b) a covenant preventing any building on the land other than building which is ancillary to a recreational or open space use and which will not impair public appreciation of the extent or openness of the land and (c) as soon as golf ceases to be played, a dedicated walkway for public access around the Lake".

25 August 1993 Merton Confirm Proposed changes to Unitary Development Plan

Policy L16A: "*In considering proposals for the future open space uses of Wimbledon Park, the Council will ensure that the land will remain open and unbuilt, and its historic landscape protected.*" Justification 8.19A: "*Wimbledon Park is one of the few remaining landscapes in London designed by Capability Brown, and it is included in the English Heritage Register of Historic Parks and Gardens. Its open landscape and its range of outdoor leisure activities are to be preserved.*"

9 September 1993 Merton Conservation Areas Advisory Committee

"Although Wimbledon Park is already afforded considerable protection by virtue of its status as MOL, there may be merits in further designating all or part of the Park as a Conservation Area; by virtue of its essential contribution to the character and appearance of the Wimbledon North Conservation Area."

Designations: The golf course, the Park and the lake are the remaining core of the Capability Brown Wimbledon Park. They have all been designated and listed to prevent development and to protect the environment: Metropolitan Open Land (the equivalent of Green Belt), Grade II* listed, Heritage at Risk Register, Site of Importance for Nature Conservation (SINC), Archaeological Priority Zone, Conservation Area. These protections have all been in place since before the All England purchased the freehold in 1993. Nothing has changed since 1993.

Press cuttings

23 September 1993 Wimbledon Borough News

John Currie, All England Chairman: *"We completely understand and support everyone's determination to keep the land open and we purchased the land on that basis."*

Tony Colman, Merton Council Leader: *"Respecting the wishes of local people, this council is resolute that the land will be retained as open space. All England has bought the land knowing this is our policy and is aware that we would not allow development of the site."*

24 September 1993 The Wimbledon Informer

Tony Colman, Merton Council Leader: *"The golf course land will be retained as open space. The whole stretch has been designated Metropolitan Open Land. We have declared it a conservation area and placed strong covenants on the sale."*

John Currie, All England Chairman: *"We completely understand and support everyone's determination to keep the land open and we have purchased the land on that basis."*

The Covenants

Transfer 23 December 1993. The All England covenanted for the benefit of Merton's freehold in the Park and Lake:

1. *Not to use the [Golf Course] other than for leisure or recreational purposes or as an open space.*
2. *No building shall be erected on the [Golf Course] other than a building or buildings the use of which is ancillary to the recreational or open space use referred to in para 1 and which building, or buildings shall not impair the appreciation of the general public of the extent or openness of the property.*
3. *As soon as golf ceases, to dedicate a public walkway around the Lake.*

Comment: The All England signed up to the covenants and now propose to break them. All the proposed tennis and other facilities would breach paragraph 1; the stadium and other buildings also breach paragraph 2; a walkway will cut across the Lake and not be dedicated to the public. All the land will remain private; the public might be admitted to part with the permission of the All England which they could withdraw at any time.

The case of *Thames Water v Oxford City Council* (1999) 1 EGLR 167 directly concerned a restrictive covenant limiting use to recreational purposes which a Council wanted to circumvent by building a stadium. At p170: *"The commercial exploitation of the game of football by hiring players and charging spectators is not itself a recreational purpose. Nor is it merely ancillary to the recreational purpose of the spectators."*

Substitute tennis for football and it is clear that the All England's proposal breaches the covenants: the primary justification and use of the new private tennis complex is commercial for the championships and qualifying, not leisure or recreation, nor would it be open space.

Merton's freehold of the Park and Lake

Merton hold Wimbledon Park and Lake as Open Space, just as they did the Golf Course. This is on Trust for the public, under the Public Health Act 1875. They cannot give permission to build on it or for the proposed commercial use, nor release the covenant without breaching that Trust and their 1993 commitments. They must protect the Trust and honour the commitments by enforcing the covenants, which still stand despite any planning permission. The covenants do not prevent *any* development, but the All England must think again, putting forward an alternative use and scheme. The engagement of local residents will be fundamental to the consideration of any alternative.