



SAVE WIMBLEDON PARK LTD

28 October 2025

Planning and Environment Bill Amendment 250 Report Stage House of Lords 29 October 2025

This is a briefing note about a proposal to remove vested public rights by retrospective legislation which favours a private landowner. It sweeps away 150 years of Parliamentary protection of public open space in public ownership as a valuable community asset. We urge all members of the House of Lords to reject this cynical and unconstitutional amendment.

This amendment has not appeared in the House of Commons. It was introduced at Committee Stage in the House of Lords on 15 September 2025. It was withdrawn. Baroness Taylor of Stevenage promised full consultation on this difficult topic, which we await with interest. The amendment has returned without any public consultation, nor debate in both Houses contrary to all constitutional principles and the rule of law.

Hansard 15 September 2025 from 9:00pm

Amendment 227E (same terms as current amendment 250) (emphasis added)

Baroness Taylor of Stevenage (Lab) ... *We recognise that, in some cases, development on these spaces is prevented if local authorities do not follow the procedure as set out in Section 123 of the Local Government Act 1972, leaving developers in legal uncertainty, notwithstanding that they have purchased the land, as the R Day v Shropshire Council case has shown. However, the amendment proposed will not resolve this issue effectively and thus will fail to have the intended effect. **It would create a contradiction of procedures in the Local Government Act 1972 and would also have retrospective effect.***

*While we must accelerate development, **it is critical that local authorities consult communities—a point made by the noble Lord, Lord Lansley—on the disposal of open land held in trust for public enjoyment to preserve the integrity of statutory procedures that protect public spaces.***

The Government believe that this issue needs to be given wider consideration to identify a balanced solution that takes into account legal safeguards and addresses the practical challenges faced by developers. It will also require engagement with the sector, which the noble Lord will be very welcome to join, as will other noble Lords who have indicated their interest in this issue. I look forward to further engagement. I think we probably can sort out the mess working together but, for the moment, for the reasons –

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Lord Blencathra (Con) *The Minister is suggesting that the Government are going to change the law on this. Can she give us **any indication of the timescale** when we might see legislation—an amendment to some primary Act of Parliament?*

Baroness Taylor of Stevenage (Lab) *I would be very loath to do that because, whenever you start looking into legal matters, in particular, **it is always more complex than you anticipated**. With the will to help make this make sense, I hope that we will be able to bring our combined forces together and get some resolution to the issue. But, for the reasons I set out, I hope that noble Lords will not press their amendments.*

[The amendment was "not moved"]

It will help to start with the background to the Local Government Act 1972. The powers of local authorities are given and constrained by statute: unlike natural persons and corporations they do not have outright powers to do anything. In the case of the disposal of public land and open space, those powers have always been severely limited, by legislation going back some 200 years.

The restrictions on disposal were gradually relaxed by a series of enactments beginning with the title "Local Government ...", largely in 1933, then comprehensively in 1972, and again in 1980. Further protections for Public Rights were added in the Land Registration Act 2002. That is the law, as interpreted most recently by the unanimous decision of the Supreme Court in *Day v Shropshire* in 2023. That decision established that if a local authority wants to sell but fails to go through certain advertisement and consultation procedures required by the 1972 Act as amended, the public's rights in the land are not overridden, but preserved and apply to the land in the hands of the purchaser.

That is the law as it now stands, and the rights of the public are enshrined in it. If that makes life difficult for some parties, then the greatest care should be taken to maintain the constitutional balance between public and private rights. Astonishingly, the current proposal seeks to backdate the removal of vested public rights, while benefitting a private club.

This is the 150th anniversary of the Public Health Act 1875, under s164 of which the Wimbledon Park Estate was held by Merton Council. It used to be necessary for local authorities to get Ministerial Consent for just about anything. In the case of Wimbledon Park, Merton's Land Registry title to the golf course required such consent to any disposal, dating back to Wimbledon Corporation's purchase in 1915. Sadly, Merton ignored that when granting the lease to the golf club in 1986 and selling the freehold to AELTC in 1993. AELTC have started proceedings against SWP Ltd claiming that s164 does not apply but that if it does, they will go to the Supreme Court to try to reverse *Day v Shropshire*.

There are various problems with the current amendment that would need to be addressed in any new legislation:

1. It's backdated to 13 November 1980, so has the effect of removing any rights of the public which, according to the law as it now stands, have survived a disposal (sale or lease) since that date. It is unconstitutional to deprive the public of such rights. We believe that the backdating was specifically designed to catch Merton's 1986 grant of the lease to the golf club (now owned by AELTC), and Merton's 1993 freehold sale to the AELTC in 1993. Neither of those transactions satisfied the requirements of the Local Government Act 1972 as amended.

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2. Even if it were not backdated, although the current drafting appears to protect a purchaser, it does not protect the rights of the public. This was discussed in the 15 September debate. A purchaser's remedy, they said, would be to seek judicial review of the local authority's sale. That is a hopeless suggestion. Since the mischief is that the local authority FAILS to advertise and consult, the remedy of JR, which must be sought within three months of the contract and has a high bar to success is wholly inadequate. In these days of confidentiality agreements and lack of funding for JR, the public would very quickly be deprived of any remedy and both local authority and purchaser would simply get away with an illegal transaction. That cannot be acceptable.

The first issue could probably be resolved by stipulating a future date for the amending legislation to come into effect, so as not to remove existing rights, but that doesn't overcome the more difficult second issue. Presumably Baroness Taylor had some such issues in mind for wider consultation.

There is a further point. Clause 108 is at the tail end of the Planning and Environment Bill. There is no suggestion that the Bill's provisions could apply to the powers of Local Government, as all the previous legislation has made so clear. We mustn't forget that Local Government ranges from Parish Councils, through Boroughs, Districts and Counties to Metropolitan Authorities. A Planning and Environment Act is hardly the place any of them would look. The current Bill is not appropriate, even if all the effort could be put in for the government to consult as widely as they promised on 15 September and come up with sound drafting to be approved by both Houses of Parliament.

Drafting is normally left to Parliamentary draftsmen, especially in the context of a large Bill like this and a proposal to amend prior legislation, which has itself already been amended. We don't know whether the proposers of the current amendment came up with drafting themselves (as lawyers, they must have been tempted...) but it does not appear that an objective, balanced approach has been taken. Normally a set of instructions is given to the parliamentary draftsman. They could be presented with the problem, perhaps the 2 main issues outlined above, and invited to consider the surrounding law and court decisions with a view to achieving the outcome sought after the wide engagement and consultation promised by Baroness Taylor.

It was claimed at the Committee stage debate on 15 September, and has been repeated by Lord O'Donnell for AELTC, that there are many cases like Wimbledon Park. We don't know, and no details have been provided. If there are so many, it is even more appropriate to consult widely and carefully before boldly trying to remove inherent public rights. If in fact the backdating is to suit the difficulties of one private landowner, it is all the more worrying and wrong.

It is particularly distressing that the AELTC have sought to promote this amendment now to overcome serious High Court litigation which they themselves launched. We believe that if SWP had not started JR proceedings about the statutory trust that prevents planning deliverability, the AELTC would not even have bothered: maybe they hoped it would go away. We told them about it in April 2023 and only now are they trying to overcome it, in what appears to be a cynical and unconstitutional way.

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