



## SAVE WIMBLEDON PARK LTD

### English Devolution and Community Empowerment Bill Briefing Note on Amendment 222C

20 February 2026

#### Background

For the past 150 years Parliament has provided special protection to public recreation land. The Public Health Act 1875 enabled local authorities to acquire and maintain public recreation land. The Open Spaces Act 1906 stipulated that such land should be held “in trust” for the public. Public recreation trust land could not be sold without ministerial consent or special Act.

The Local Government Act 1972 authorised a local authority to dispose of such protected public recreation land only if it first conducted a statutory advertisement and consultation.

In 2023 the Supreme Court, in the case of *Day v. Shropshire Council* [2023] UKSC 8, confirmed that land sold in breach of the consultation requirements would remain subject to the statutory public recreation trust. In other words, the special protection afforded to the public would not be removed by local authority incompetence or ignorance.

In its unanimous judgment the Supreme Court also identified the key issue, the failure of local authorities to be aware of the land which they hold for public benefit, noting (para 117) that they “*must be able to demonstrate that they have taken sufficient steps to establish the legal status of that land and act in accordance with all relevant legislation prior to sale.*”

#### Legislative history

In November 2025 Lord Banner & others proposed amendment 250 to the Planning and Infrastructure Bill, to provide retrospectively that public recreation land disposed of without a statutory consultation would not be subject to the statutory trust. A local authority which disposed of land without complying with its legal obligations would be exonerated, public rights would be extinguished, and no public remedy would be available. In the event, the amendment received no support in the House of Lords and was “not moved”.

In the debate on the amendment, the Government Minister Baroness Taylor of Stevenage gave an assurance that the Government was committed to: “... *a wider review of existing protections ... to bring coherence to the legal framework, making protections more transparent and accessible, so that communities can protect their most valued open spaces.*” That “review” has not yet started, nor has there been any announcement of the terms, process or timetable for such a review, and certainly no public consultation. Public rights are at the heart of this historic legislation; the promised review is a critical next step.

#### Comments on the latest amendment

1. Lord Banner has even now introduced a new amendment (222C) to the English Devolution and Community Empowerment Bill. The sole purpose of the amendment appears to be to provide an ‘escape route’ for purchasers of land who may have acquired without understanding or, even, while ignoring the trust status of the land. It again exonerates local authorities, denying a remedy for a local authority’s failure whether in ignorance, or worse.

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2. Pending the Government's promised review, the amendment is premature and should be rejected. Severely flawed, it fails to address the key issue noted by the Supreme Court in *Day*.

3. Public recreation land is held in trust for public benefit. It is wrong in principle to grant relief to the purchaser (whether innocent or not) on the one hand, without addressing the mischiefs which the Supreme Court identified and which sections 122 and 123 LGA 1972 were designed to avoid i.e. local authorities, whatever their motive, failing to identify public rights in land which they hold only as trustees, and appropriating or disposing of that land without going through a statutory procedure. This is precisely what the Government "review" should be addressing. There is no justification for dealing with these important protections in a partial way like this, nor burdening the Secretary of State with a myriad of applications to correct local issues. This is a reversal of the thrust of 100 years of legislation, the antithesis of this Bill's purpose to encourage devolution.

4. The amendment itself is also poorly drafted and full of anomalies. Just for example:

(a) the very detailed "new publicity requirements" referred to in qualifying condition E are in stark contrast to the very basic advertisement requirements in sections 122 and 123 LGA 1972. The latter obviously require review, to ensure that communities are given appropriate notice of their council's intention to dispose of recreation land held in trust.

(b) for the purposes of determining whether qualifying condition D is met, it would be "irrelevant" whether the land was in fact subject to a statutory trust. Why should the Secretary of State be troubled with applications regarding non-trust land? Why should the public be effectively precluded from asserting their rights to recreation on the land?

(c) in qualifying condition F "public interest" is not defined. It is hard to conceive how the public interest would be served by releasing public trust rights. How can "the protection of public rights of access" be achieved by discharging a statutory trust over the land? Surely, "development proposals" will be of interest primarily to the developer, not the public. How is "protection of archaeological remains" relevant to the public recreation rights?

(d) according to this amendment, the Secretary of State has complete discretion whether to make a discharge order. He is not obliged to give reasons. The representations to him are not made public. There is no public hearing nor even a discretion to order a hearing. There is no consultation. This appears to be an executive not a judicial power: there is no right of appeal or challenge (presumably apart from Judicial Review). This is the opposite of the transparency reasonably expected where the public administration is concerned, and the loss of public trust rights is at stake. Would it not be better, at least, to delegate the power to a judicial body, for example the Upper Tribunal, which already has power to modify or discharge restrictive covenants under section 84 LPA 1925?

## Conclusion

The amendment ignores the key issue identified by the Supreme Court in *Day*, the failure of local authorities to be aware of the land they hold in trust for public benefit. Far from reinforcing the protection of public recreation rights, it is designed to grant relief for parties who find their development plans thwarted by those legitimate public trust rights. If public rights are to be subverted in this way, a comprehensive review of the way these rights are treated is required. "Community Empowerment" requires nothing less.

The amendment should be rejected and instead the promised review should be undertaken, at pace, with the widest publicity and the contributions of national bodies and of all who are interested in the protection of public trust and recreation rights throughout the country.