



AELTG v SAVE WIMBLEDON PARK LTD

Judgment handed down on 19 March 2026

Summary

There were two principal issues the High Court had to decide:

- (1) whether the golf course land was subject to a statutory trust, pursuant to section 164 Public Health Act 1875, at the time London Borough of Merton sold the land to AELTG in 1993; and
- (2) if the land was subject to a statutory trust up to then, whether the trust survived the sale to AELTG, given that the advertising and consultation requirements in section 123 Local Government Act 1972 were not met.

The Court's answer to both questions was 'No', with the result that the golf course land never was, and is not now, subject to a statutory trust. Accordingly, there is no statutory impediment preventing redevelopment of the land by AELTG.

The Judgment runs to 122 pages (404 paragraphs) and is summarised as follows. At the conclusion the Judge noted that "the legal teams on both sides have dealt with the matter assiduously ... leaving no stone unturned."

First Issue

The Judge started by looking in detail at the provisions of the Wimbledon Corporation Act 1914, pursuant to which the Wimbledon Corporation acquired the freehold of the entire Wimbledon Park Estate. He focused in particular on section 10, which obliged the Council to 'appropriate and maintain not less than twenty acres ... for the purpose of a public walk pleasure ground public park or recreation ground'. Section 11 then provided that, following such appropriation, a section 164 statutory trust would apply to that land.

The Claimants (AELTG) argued that the golf course land was never appropriated pursuant to section 10 because, at all times, the land was leased to a private golf club, for private not 'public' recreation. By contrast there was compelling evidence that the Council intended to, and did, appropriate the Park for public recreation use. SWP argued that the granting of short-term leases of the golf course, thereby temporarily suspending public access to the land, was not incompatible with section 10 appropriation. While there was evidence demonstrating that the Council treated

the Park and golf course as a single entity, it was not established that the entire Estate (apart from Banky Field, which was sold off for housing) was appropriated for public recreation.

Having carefully considered the case-law regarding the meaning of 'appropriation' and reviewed a mass of evidence as to the way in which the Estate as a whole was treated by the Council in the 50 years following the acquisition, the Judge reached the firm conclusion that only the Park, and not the golf course land, was appropriated under section 10 [129].

Next, the Judge focused on the legislation in 1964-65 which had the effect of transferring the Wimbledon Park Estate to the London Borough of Merton, which the Judge recognised as being "at the heart of SWP's argument as to the basis on which the Golf Course Land is currently held." [143] SWP contended that, on a proper reading of the legislation, the entire Estate was land "held" under and for the "purposes" of section 5 of the Wimbledon Corporation Act 1914, and that as from April 1965 the land was held by Merton under section 164 of the Public Health Act 1875. SWP argued that the legislation should be given its "plain meaning", unless the plain words produced a result that was absurd or unworkable.

The Claimants argued that the legislation did not have this effect, for two reasons. Firstly, they disputed SWP's interpretation of the relevant wording in the context of the facts as they stood in 1965. Secondly, that interpretation would substantially alter the status of the golf course land, which had never been used for public recreation, something that Parliament had never intended. The Claimants argued that, rather than relying on the plain meaning rule, the better course was to consider the legislative purpose and scheme and look at the words of the statute in that context.

The Judge preferred the Claimants' approach to statutory interpretation. He agreed that the clear purpose of the legislation was to transfer property rights and obligations to the new London Boroughs. It was not its purpose to change the status of land being transferred. The Judge concluded that, by 1965, it could not reasonably be said that the golf course land was "land held for the purposes of section 5", when the land was not being used for any discernible purpose under the 1914 Act but was instead let on a long lease pursuant to the Local Government Act 1933.

For all these reasons, the Judge decided that the golf course land was not subject to a statutory trust when it was acquired by Merton in 1965, or when Merton sold the freehold to AELTG [241]. It was accordingly not strictly necessary to determine the Second Issue, but the Judge opted to address this anyway in view of the arguments raised [and presumably in case, on an appeal, his decision on the First Issue was overturned.]

Second Issue

This issue was predicated on the basis that, at the time the freehold was sold to AELTG, the golf course land was held by Merton under section 164 PHA 1875.

SWP argued that where land is held by a Council under section 164, the land is subject to a statutory trust. Following the decision of the Supreme Court in *Day v. Shropshire Council*, where a Council disposes of land comprising “open space” which is subject to section 164, it remains subject to a statutory trust unless the Council advertises the proposed sale and consults with objectors, as required by section 123 Local Government Act 1972.

The Claimants argued that *Day* did not apply in this case because, in contrast to the facts in *Day*, the golf course land had not been laid out and made available for public recreation. Section 164 imposed a duty on councils to do so, but until that happened the rights of the public arising from a statutory trust did not arise. After considering case-law on this point, the Judge agreed with the Claimants’ argument [286]. In his view, “the land would only become subject to a statutory trust if it was laid out for the purposes of public recreation and used as such by the public. Before that point there was a public law duty ... but not rights under a trust that would run with the land.” [286]

That begged the question of whether the golf course land was in fact laid out or used for public recreation by 1993. The Judge concluded emphatically that the land was not being used for public recreation, so as to bring into being a statutory trust. Rather, it was at all times let to a private golf club on an “exclusive” basis. If members of the public strayed onto the golf course they did so, not by right, but as trespassers. Those non-members who played golf on the course, or who used the lake for fishing or otherwise, did so as licensees of the golf club.

The Claimants’ alternative case on this issue was that any section 164 rights were overridden by the Land Registration Act 1925 when the golf course land was sold to AELTG. At the time of the sale the golf course was registered land. Under the Act, upon registration of the Claimants’ title to the land, they took free of all rights and restrictions save those appearing on the register or “overriding interests”. The issue in this case was whether section 164 rights constituted overriding interests that would be binding on AELTG.

Overriding interests include “public rights”. SWP argued that rights under a section 164 statutory trust would comprise public rights within that definition. The Claimants argued that public rights can refer only to rights that are in existence at the point of sale. In this case, there were no “public rights” presently exercisable.

Again, the Judge preferred the Claimants’ legal analysis on this point. He agreed that the public’s entitlement to use land laid out and made available for public recreation under section 164 can constitute an overriding interest. However, “a right to use the land cannot constitute an overriding interest unless it is extant at the date of the relevant transfer.” [329] In 1993 the section 164 rights were not exercisable, and therefore did not constitute an overriding interest binding on AELTG.

In *Day*, Lady Rose had said that “very clear words were needed in order for a power to dispose of land to be effective in extinguishing the public’s rights ... under section 164”. SWP argued that, on a proper interpretation of section 20 LRA 1925, there may be “public rights” to which a purchaser would still be subject. In other words,

section 20 was not sufficiently “clear” to extinguish the public’s rights. The Judge was unpersuaded by the logic of this argument and rejected it because, as he had already decided, the public did not have an interest in the golf course land [341].

A further argument advanced by SWP was that the LRA 1925 was inconsistent with the LGA 1972 and so must be considered to have been repealed or modified by it. Having reviewed the relevant authorities the Judge did not consider that there could be said to be a general rule to that effect. However, the alleged conflict between the two needed to be considered.

SWP argued that the LGA 1972 provided a comprehensive mechanism for freeing land of a section 164 public trust on disposal. If that conflicted with the LRA 1925, the LGA 1972 should be followed. The Judge said that, in order to decide whether or not there was a conflict, one had to consider firstly whether the golf course land consisted of, or formed part of, an open space within the meaning of the LGA 1972.

The Judge concluded that it was not open space, because it did not fall within the definition of “open space” in the Act, comprising “any land laid out as a public garden, or used for the purposes of public recreation ...”. The golf course land was neither of those things. Nor was it “part of” an open space. The Judge conceded that it could reasonably be said that the golf course was acquired by the Wimbledon Corporation as part of an integral whole, and that the land adds to the visual amenity of the Park. However, the land was not contained within that open space, but was adjacent to it. He concluded that it made no sense to say that the golf course land was “part of the Park” (or that “the Park was part of the golf course land”). [377]

The Judge accepted that, if a statutory trust had arisen, this would give rise to a public right and an overriding interest under the LRA 1925. If the advertisement and consultation requirements in the LGA 1972 were followed on a disposal, then the LGA 1972 would have modified the application of the LRA 1925, so that the land would be transferred free of the overriding interest. However, this scenario did not apply here because, as the Judge had already decided, the golf course land was not subject to a statutory trust. [387]

The final point to be decided was whether the AELTG was a “purchaser in good faith in 1993 without notice or knowledge of the statutory trust”. SWP complained that the evidence produced to the Court about the extent of such knowledge was incomplete. Furthermore, this point was irrelevant to the two issues which the Court had been asked to decide (but might only be relevant should this case be appealed to the Supreme Court). On this point at least the Judge agreed with SWP.

Conclusion

The Judge summed up as follows:

“In essence I have found that land that had never been appropriated or designated for the purposes of public enjoyment could be sold without imposing onto the purchaser a public trust where one had never been before.” [403]