



SWP PRESS RELEASE

Save Wimbledon Park: “We Fight On”

There was disappointment for Save Wimbledon Park Ltd (SWP) and its supporters as the High Court ruled that the golf course land in Wimbledon Park is not subject to a statutory public recreation trust (under the Public Health Act 1875). Accordingly, the All England Lawn Tennis Club (AELTC) is not bound by any restrictions, resulting from such trust, which might impede the massive expansion of its estate onto that land. The AELTC had conceded that its scheme to build a new stadium and 38 other tennis courts would be incompatible with public recreation rights but denied that such rights existed.

Following a Trial lasting 6 days in mid-January Mr Justice Thompsell decided that, because it had at all times been leased to a private golf club, the golf course land was never subject to a statutory public recreation trust. Therefore, it did not matter that when the London Borough of Merton sold it to the AELTC in 1993, Merton omitted to undertake a statutory advertisement and consultation. The Supreme Court decision in the case of *Day v. Shropshire* did not apply.

In view of the nationally-important issues of law involved in the case, SWP intends to apply to the Court of Appeal for permission to appeal. Its decision is expected within about 3 months.

Jeremy Hudson said, "We love tennis but we continue the fight after this news because there is a strong case for protecting this precious open space from development. Wimbledon promised they would never build on this land. And Wimbledon can do better because there are existing, alternative plans which show that their scheme can be accommodated on their current site. This not only saves the environment but leaves the park free for the recreation and enjoyment of the public. These better plans would still allow AELTC to stage a qualifying tournament on site in keeping with the other Grand Slams. Therefore, we fight on."

Christopher Coombe added, "We have always maintained the outcome of our case sets a precedent. Wimbledon Park is not just a local issue - it has significant national implications. This judgment is bad news for everyone in London and all around the country who live near similarly protected green space and open land which might now be bulldozed and built on. People also should be aware that the House of Lords will soon be debating an amendment to the English Devolution Bill, aimed at giving those who buy statutory trust land, avoiding any statutory advertisement and

consultation, a 'get out of jail card'. If passed, the amendment will effectively negate the Supreme Court decision in Day v. Shropshire, by allowing developers to apply to the Secretary of State for a statutory trust discharge order, which would extinguish public recreation rights."

Notes to Editors

The case involved complex issues of statutory interpretation, dating back to 1915 when the Wimbledon Park Estate was acquired by Wimbledon Corporation, and focusing in particular on legislation which gave effect to London's local authority reorganisation when the whole of the Estate was transferred to Merton in 1965. The Court was also required to analyse the provisions of the Local Government Act 1972, which permitted a local authority to dispose of public recreation trust land. Yet another area of fierce legal argument was the effect of registration of AELTC's freehold title to the golf course land in 1993, and whether this overrode the 1972 Act.

In a lengthy judgment running to some 404 paragraphs Mr Justice Thompsell summarised all the opposing arguments before reaching his conclusion. He preferred the AELTC argument that the golf course land was never 'appropriated' to public recreation use before 1965, because it was at all times let to a private golf club. He also agreed with AELTC that when interpreting the relevant legislation, one had to have regard to the legislative purpose. It was not its purpose to change the status of the land when it was transferred to Merton in 1965. They argued that it did not become statutory trust land then and in those circumstances the land was free of any public recreation rights when it was leased to the golf club in 1986 and sold to AELTC in 1993.

Although not strictly necessary to do so, the Judge also decided a number of issues which would have arisen had he decided against the AELTC that the land was subject to a statutory trust. These concerned consideration of when "public rights" under a statutory trust arise, what do "public rights" actually mean, and the meaning of "open space" in the relevant legislation.

This decision is of national importance. For the past 150 years Parliament has provided special protection for this sort of land. In recent years public recreation space, particularly in London, has been under pressure from developers for private sporting use. SWP argue that this decision runs counter to the principle laid down by the Supreme Court in Day that "very clear words indeed are needed in order for a power to dispose of land to be effective in extinguishing the public's rights under the statutory trusts." It certainly merits a review by a higher court.

Even if an appeal fails to reverse the decision of the High Court, the AELTC still face the problem of the covenants they gave to Merton in 1993, not to develop the golf course but keep it open and to provide a walkway on the land around the lake. The AELTC have conceded that their proposed development would breach these covenants, and that they would need to have the covenants removed by a further application to court.

It is possible that it is the AELTC which is still pushing for a change in the law, following the failed attempt by Lord Banner and AELTC director Lord O'Donnell last year to amend the Planning and Infrastructure Bill which would have had the effect of rendering this court case unnecessary. The government has promised to consult about issues arising for the protection of open space such as Wimbledon Park. However, notwithstanding that no

consultation has so far taken place, Lord Banner has tabled an amendment to the English Devolution Bill which would give developers who find themselves saddled with statutory trust land, the right to apply to the Secretary of State for a statutory trust discharge order. This amendment will be debated by the House of Lords in the next 4-5 weeks. If passed, this would effectively negate the Supreme Court decision and severely threaten public recreation rights.