24 October 2023

Merton Planning: planning.representations@merton.gov.uk

Wandsworth Planning: planning@wandsworth.gov.uk

AELTC application to develop Wimbledon Park Golf Course

Merton 21/P2900, Wandsworth 2021/3609

Comments on LBM Planning Report and on certain recently submitted further materials

LBM have published the agenda for their planning committee to consider this application on 26 October 2023, and with it their Case Officer's Report (the "Report"). This, and recent additions to the LBM planning website include many new materials in this application on which representations need to be made. In the time available since publication of the Report we would like to make some observations about aspects, reserving the right to raise further points at other times and in other *fora*. Numbers in brackets refer to paragraphs of the Report.

Please therefore treat this paper as a further planning objection.

For the Wimbledon Park Residents' Association, 56 Home Park Road, SW19 7HN.

Iain C. Simpson Chairman and C.B. Coombe, Planning and Environment Committee

1. Summary

1.1 This paper addresses some key points where we believe the Report is wrong in law, failing to make the case for recommendation of approval of the application. The application should be refused for these and many other reasons.

1.2 The Report is confused about the purpose of the development, so cannot accurately assess it against planning policy. Is the development for the qualifying tournament; to what extent is it for championship use; why is it necessary? LBM's DRP [Design Review Panel], and Local Plan Inspectors require a comprehensive masterplan which has not been produced. The application is premature and incomplete and should be rejected.

1.3 The Applicant's Environmental Impact Assessment was not accepted by LBM's own consultants, whose advice the Report overrules. No good reason is given for overruling LBM's consultant. The Report must be unsound.

1.4 The Report ignores sound legal arguments that the 1993 covenants and Day v Shropshire apply to this application as material considerations.

1.5 The Report fails to note that Urban Greening Factors have been overclaimed and would breach London Plan Policy.

1.6 The Report supports a breach of LBM's own policy against accepting outline applications for conservation area development. This application should not have been accepted.

1.7 The Report does not take all representations into account, contrary to policy and regulations.

1.8 The Report gives no weight to the emerging LBM Local Plan. This is wrong: the Plan is now at an advanced stage, and the Inspectors' recommendation contradicts the proposals in this application. The emerging Local Plan should be given substantial weight.

1.9 The Report fails to distinguish the proposed entertainment complex from the current golf use for sport and recreation, contrary to National Planning Policy.

1.10 The Report ignores the professional advice of LBM's own Conservation Officer: it will cause substantial harm.

1.11 The benefits proposed are of little significance and do not justify harm however categorised.

1.12 Finally, we have inserted at the end of this paper a composite plan which shows the full extent of the application's intervention in this protected landscape. It is strange that nowhere does the applicant appear to produce for public view a comprehensive plan showing all the features of its proposals. We have pieced the various individual plans together. We agree with the Conservation Officer's advice that this is patently "substantial harm".

2. What exactly is the purpose of this development? 1.2.3, 1.3.4, 1.4.3, 1.9.4, 2.2.7, 6.13.5

2.1 Expansion of the AELTC complex is mentioned generally (1.2.3), but the Report explains that the golf course is to "host the Qualifying Event and improve the operation of the Championships" (1.3.4), going on to explain "The Qualifying Event will take place solely within the application site currently comprising Wimbledon Park Golf Course. However, during The Championships some of the courts within the parkland will be used as practice courts for the competitors, given the shortfall within the existing AELTC site" (1.4.3). The DRP advise that "the proposals **definitely need to be part of a wider masterplan for the whole AELTC Championships, MOL and 'at risk' designated park**" (1.9.4) (emphasis added).

2.2 The Report observes that "The Applicant's Planning Statement notes the provision of new courts will also serve to improve circulation and spectator comfort within the AELTC Main Grounds during the Championships … and … It should be noted that alterations to facilities in AELTC's Main Grounds would be dealt with under separate planning permissions [sic]"

(2.2.7). The Report advises on the Environment Impact: "Under the EIA Regulations, the ES is required to specify the reasonable alternatives that were considered" (6.13.5).

2.3 The purpose behind the application must be clear to enable the Report to address the very high planning policy hurdles that protect this site. MOL development requires Very Special Circumstances; substantial harm to a Heritage asset must be "necessary to achieve substantial public benefits" and to assess "reasonable alternatives". Will the new courts be used for championship purposes or not? It is conceded by the applicant that the new stadium will not be used for the qualifying tournament. No masterplan is offered. There is ambiguity about the overall purpose, and no clarity about the number and extent of use of

the proposed courts. There is uncertainty as to what is to happen on the AELTC main site, even if the Report assumes that permission will be granted (2.2.7), rather than that an application will be made.

2.4 No case can be made on this basis for the large buildings or the total number of courts. Without a comprehensive masterplan for both the AELTC sites (existing and proposed) and the Park, and since there is no corresponding application for alterations to the existing AELTC site, this application is incomplete and misleading. The ambiguity and uncertainty casts too much doubt on the extent of the case to clear the policy hurdles safely. This Report is wrong in law and this application must be refused.

3. Environmental Impact assessment: is it satisfactory or not? 1.5.3, 6.13.

3.1 The summary suggests that the applicant provided full information: "In accordance with the EIA regulations, the Applicant submitted a full Environmental Statement (ES) with their initial submission in 2021. This was subsequently amended in May 2022. Further, an addendum to the ES was submitted in October 2022" (1.5.3). Later, the report discusses the advice sought by LBM from JAM Consult (6.13.33 – 6.13.42). In this later discussion, it is apparent that further material was provided by the applicant, including a legal opinion, none of which seems to be on the LBM planning website for the public to review and question. Nor does it seem that LBM took any legal advice in response to the applicant's opinion.

3.2 Instead, the Report seeks to justify departure from the advice of LBM's own consultant. The Report notes that JAM Consult did not agree with the applicant: "Officers acknowledge that there has been a difference of opinion between the Applicant and JAM Consult on the adequacy of the ES" (6.13.41). However, the Report then appears to ignore JAM's advice, preferring to take the applicant's position, and JAM is not given the last word.

3.3 This raises considerable concern about objectivity in the planning process, and the fundamental errors in the ES, which LBM do not appear to have acknowledged or pursued. LBM consulted an external agency at, apparently, their own expense, but they are a very brave planning authority to ignore the advice obtained, and to prefer the view of the applicant. Any decision based on such an unjustified one-sided approach must be wrong.

4. Material Considerations: 1993 covenants and Day v Shropshire 1.6, 1.7 and 6.2.7

4.1 There are two fundamental legal issues in this application, which are still unresolved. Both should be considered in the planning process, and both also need to be resolved, or failing that litigated in other *fora*.

4.2 The two issues of 1993 Covenants and Public Trust Land have been the subject of extensive submissions and objections, including legal papers from this Association and The Wimbledon Society, from lawyers on our behalf, and from the applicant, to which the Report pays little attention. First there is the legal matter of whether either topic can be a material consideration. In planning terms, the Report states: "Whether or not a matter is a material consideration is in the first instance a matter of judgment for the decision-maker ..." (1.6.5). This is wrong in law. The House of Lords has held that whether or not a matter is a material consideration is a matter of law, not for the decision-maker's judgment.

4.3 This Association submitted an extensive discussion of the legal meaning of Material Considerations in a paper of 15 February 2023, which is shown on the LBM planning website but nowhere, so far as we can see, considered by this Report. That paper explained that "the courts have set broad limits of discretion in development control" (Encyclopaedia of Planning Law 2-3275, P70.15). From one of the leading cases: "In principle, it seems to me that **any consideration which relates to the use and development of land** is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances" (Cooke J. in Stringer v MHLG [1971] 1 All E.R. 65 at 77, emphasis added). We also noted that The Encyclopaedia of Planning Law at 2-3257/8 lists 18 specific instances of material considerations, and of those 18, our paper discussed items (1) Protection of purely private interests and (9) Bias, appearance of bias and predetermination. We concluded that the 1993 covenants were material considerations.

4.4 There has been no response to our 15 February paper from LBM or from the applicant. However, our attention has recently been drawn to a Joint Opinion of Leading Counsel for the applicant dated 17 January 2023, and published on the LBM website only within the last three weeks. This "Applicant's Opinion" appears to attempt to respond to some of the issues in a submission from The Wimbledon Society dated as long ago as 13 August 2022. Its late publication on LBM's website suggests that perhaps only now have LBM considered it, but, unfortunately, the Applicant's Opinion omits or overlooks issues which have come to light during this protracted application. It is remarkable that, without attribution, the Report appears to lift words and arguments from the Applicant's Opinion (1.6.5 and 1.6.6) without any counterbalancing discussion, and without apparently having taken its own advice.

4.5 At this stage we must draw attention to certain deficiencies of the Applicant's Opinion. As the Report makes an error of law, they will need to be considered in further proceedings if this application is not refused. The conclusion of the Applicant's Opinion is contradictory. Paragraph 4(a) states:

"The existence of the restrictive covenants is not a material consideration in the determination of the application for this proposal",
while at paragraph 4(b):
"The interests protected by the restrictive covenants in so far as they touch upon land use planning considerations fall to be considered as part of the planning merits in the ordinary way".
Neither The Wimbledon Society (13 August 2022), nor this Association (15 February 2023), suggest that the mere existence of the covenants is especially relevant. What is critical is what the 1993 covenants say, why and how they were imposed, and, as the applicant's opinion states, "the interests protected" by them.

4.6 The 1993 covenants have been set out by this Association and The Wimbledon Society in extensive submissions and objections all of which were promptly published on the LBM and LBW websites. The applicant has never challenged our interpretation of the 1993 covenants, nor denied that they apply to this proposal, not even in the Applicant's Opinion in which it tried to dismiss them from the planning process. It must be inferred that it does not dispute that they apply. We understand also that LBM invited the applicant more than a year ago to explain why the 1993 covenants do not apply, and the applicant has declined to answer. Noting the efforts which the applicant has made to dispute many other points arising in this longstanding matter, its silence on this very important point is significant.

4.7 It now appears that the Report also accepts that the covenants apply such that they "…would be resolved before the development proceeds" and concludes that "…deliverability … attracts only minimal weight…" (1.6.6). This is a very important statement, because it exposes two key flaws in the arguments against our submissions about the covenants.

4.7.1 First, it is not denied that they apply. In fact, they prevent the development, or why else should it be expected that they would be "resolved" before the development proceeds? If they did not apply, why would the development be delayed for them to be resolved?

4.7.2 Second, LBM hold the benefit of the covenants on trust for the community of Wimbledon; they are not free, unilaterally to vary, waive or release them. To suggest otherwise ("it is likely that … [they] would be resolved…" 1.6.6) is to prejudge the outcome of the process which LBM must undertake, and that amounts to bias or conflict of interest in the planning process by ignoring them, and in the conduct of their trusteeship by giving them away.

4.8 The 1993 covenants are a material consideration as to deliverability and as a block on development: they patently relate to the use and development of land. The Report, and any decision taken following it, is wrong in law, and reviewable in further proceedings on this basis. It must therefore be concluded by the planning decision-makers that:

4.8.1 the covenants are relevant in this application,

4.8.2 they protect significant interests in the use and enjoyment of this public space,

4.8.3 they prevent or restrict the proposed development, and as such,

4.8.4 they should be given substantial weight.

4.9 The Report also discusses the positive covenant within the 1993 transfer to "provide a lakeside public walkway" (1.6.7). The covenant is not merely to provide, but to "dedicate" a walkway, a much stronger legal obligation connoting perpetual public rights. This part of the Report is based on a mistake as to the law. It is material because instead of the powerful obligation to dedicate on the applicant's land, LBM now propose to use public trust land (the lake) instead, saving the applicant considerable trouble and gaining it a lot of land.

4.10 Finally, as regards the 1993 covenants, the applicant has suggested various ways in which it thinks it can evade its obligations under them. Our colleagues at The Wimbledon Society have already robustly answered (objection dated 13 October 2023) the applicant's strange suggestion that s84 of the Law of Property Act might apply. That objection is not referred to in the Report but must be taken into account. The applicant also mentions another route under s203 Housing and Planning Act 2016, which we equally robustly dismiss as illusory: it would require LBM to buy the land back, and then put it on the market at full value ("best consideration", s123 LGA 1972) with no certainty that the applicant would succeed in re-acquiring it.

4.11 Day v Shropshire (NB not Shropshire v Day) was the subject of a lengthy paper from this Association dated 12 April 2023, responses from the applicant in July, and a letter from Russell-Cooke and the opinion of George Laurence KC dated 31 July, sought from this Association by LBM so they could be well informed. We followed with a further paper on 13 August. It came as some considerable surprise that an important further opinion in the matter should appear, not on the LBM planning website when produced on 11 September but linked in this Report just a week before the deadline. Separate legal papers on our behalf will address that latest opinion.

4.12 In the meantime, we note that: "Officers consider the existing golf course largely fulfils the key purposes for including land in MOL … insofar as the site … Contains open air facilities for sport and recreation albeit with limited public access by nature of being a private member's club…" (6.2.7). In fact the golf course, while privately owned, was always open to members of the public: this contradicts any argument that the golf course is not open space for the purposes of s123 LGA 1972. Day v Shropshire clearly applies.

4.13 Further arguments have also been raised by the applicant, and conceded by LBM, about the Wimbledon Corporation Act 1914 and the status of the Wimbledon Corporation. These simply distract from the plain and simple proposition. In 1965 everything "held by the Wimbledon Corporation under s5 of the 1914 Act" (1965 SI 654) was transferred to LBM and put into the trust. Wimbledon Corporation had acquired the entire Estate under s5 and whatever they continued to hold in 1965 went to LBM in the public trust. The 1965 Statutory Instrument is clear, and no amount of special pleading that it produces a result inconvenient to the applicant could avoid that. This is compounded in our view by LBM's ignorance of the history of the site when they came to discuss the sale in 1993, identical to the Day v Shropshire position. They didn't know what they had, and blindly went ahead.

4.14 Whatever the outcome of this planning application, Day v Shropshire and its implications will be the subject of further legal exchanges and, potentially, proceedings. But as they are so important to the planning decision, they should be taken into account now.

5. Urban Greening and other overstated biodiversity claims in the application 1.10.8, 4.5.97-105 and 4.5.687

5.1 The UGF File note issued by the applicant was indeed notified, and a deadline set of 11 October for responses. A response dated 10 October was issued that it considerably overclaimed Urban Greening and the development would therefore be contrary to London Plan policies.

5.2 While noted at 4.5.687, it was not listed as an ecological concern, and we cannot see that it has been taken into account in the advice of Officers in the Report.

6. Outline or Detailed in a conservation area 2.3 and 4.4.6

6.1 The Report fails to acknowledge that the application breaks one of LBM's planning policies, that outline applications are not acceptable in a conservation area (Policy DM D4 (e)). This point was raised early on by The Wimbledon Society with LBM, who replied (email Tara Butler to Chris Goodair, 24 November 2021, 17:51) that in accordance with Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 SI 595, LBM were required to validate it. This missed the point since it could and should have been rejected after validation. Further, many representations refer to this breach of policy (4.5.161-165).

6.2 No explanation for departure from policy appears to be provided in the Report. Instead, the Report highlights the uncertainty of the final product in a conservation area: "…layout … the only matter submitted in detail … means the position of buildings … The matters reserved include appearance, means of access, landscaping and scale" (2.3.3). While the footprint of the building may be set, so many details are not, and they will be dealt with by officers without the full glare of public scrutiny, potentially to allow a larger/taller building, an even larger blot on the landscape. It is strange that whereas various issues were referred to the Planning Policy Officer (4.4.6) this issue was not. This policy departure in such a sensitive and protected landscape is unlawful.

7. Have all representations been "taken into account"? 4.5.3

7.1 By Article 33 of the Town and Country Planning (Development Management Procedure) (England) Order 2015: "A local planning authority must, in determining an application for planning permission, take into account any representations made...".

7.2 "Take into account means that you review the different arguments brought forward in the consultation from the technical point of view, if necessary, discuss them with the participants, evaluate them in a traceable way, and then let them become part of the

considerations on the drafting of your policy, your plan, your program, or your legal instrument." Law Insider accessed 23 October 2023: https://www.lawinsider.com/dictionary/take-into-account#:~:text=Sample%201-,Take%20into%20account%20means%20that%20you%20review%20the%20different%20arguments,your%20policy%2C%20your%20plan%2C%20your

7.3 LBM "records one objection or support per household" (4.5.10). On this basis the Report notes 894 objections. This is an under-representation of the number of objections. Due to the size of the initial application, the addition of several more documents over a long period of time, the constant feed of information and marketing PR from the applicant over more than two years, and further notices from the planning department many households lodged more than one objection, each dealing with different aspects, over a long period of time. For balance, all objections should be counted.

7.4 While section 4 of the Officer's Report lists many comments made by objectors, the numbers are understated, and it is not at all apparent from the Report itself that many significant technical representations have in fact been taken into account. Extensive legal and environmental papers have been submitted and ignored. The right is reserved to draw attention to these oversights in any subsequent proceedings.

8. Emerging Local Plan must be given weight 5.1.3-8

8.1 The Applicant's Opinion of 17 January 2023, recently added to the LBM planning website, mentions the "emerging" LBM Local Plan, no doubt seeking to rely on it to influence the planning decision as a material consideration. At paragraph 16 it records "Site Wi3 … [the existing AELTC tennis complex together with the golf course application site] … has been allocated as part of the emerging Merton Local Plan. Merton has resolved to support in land use planning terms (through the draft Plan) the creation of a world class sporting venue at the allocation site". The Applicant claims that LBM has made its planning decision by "resolving" (a powerful word in local government) to support it. This confirms our contention that LBM's support creates a serious conflict of interest. This is not contradicted by LBM.

8.2 The LBM Local Plan is in its latter stages (5.1.4). It was launched six years ago, and two hearings held more than a year ago. The reader of the Report is left with the impression that the new plan endorses the proposed application: "Officers note that New Local Plan that was submitted to the SoS for examination included Site Allocation Wi3" (5.1.7). However, the Report goes on to summarise two post hearings letters but concludes that due to uncertainty surrounding Site Allocation Wi3, no weight should be given to it. This is correct as far as it goes, in that allocation for development now appears most unlikely. But more than that, the new plan proposes something entirely different and more appropriate to the protected qualities of this important open space. Towards the end of a lengthy process the Inspectors' comments are particularly relevant and should be taken into account in accordance with the NPPF. For balance, this needs to be explained, since the Report fails to do so.

8.3 The Inspectors charged with examining LBM's proposed Local Plan have in fact informed LBM "that further MMs [Main Modifications, ie changes] are necessary for reasons of soundness and legal compliance" (Post Hearings letter dated 30 March 2023 to LBM, Preamble para 1). In a section of this letter, devoted only to an allocation of the golf course for development, and to AELTC's request for the removal of MOL status from most of the existing AELTC site ("Site Wi3 the All England Lawn Tennis Club (AELTC)" paras 29-39), they make some telling points which must be repeated here to balance the Applicant's, and the Report's, suggestions [emphasis added]:

"29. References have been made throughout the examination to the different characters of the AELTC holdings on either side of Church Road – on one side is a long-established, internationally renowned, and intensively developed sporting facility, which creates a great deal of associated activity, and pressures for incremental development relating to its unique function. On the other side, the land within AELTC's ownership is a golf course, and only part of the wider Wimbledon Park, a designated heritage asset which is in a number of ownerships, straddles Merton's boundary with the London Borough of Wandsworth, and includes a range of different uses.

36. Turning to the proposed boundary changes to the northwest of the MOL to the west of Church Road and part of the main AELTC site, the proposed amendments do not fully reflect the recommendations of the Green and Blue Infrastructure, Biodiversity and Open Space Study (the GI Study) and propose to remove the MOL designation from areas which nevertheless accord with relevant criteria in Policy G3 of the London Plan. Moreover, although there are longer term aspirations to develop the facilities and an evolving vision for the AELTC estate as a whole, the evidence is somewhat superficial in terms of how it would relate to this particular part of the land holding.

38. Taking these matters together **we find the allocation to be clearly unsound** as submitted, and the Council's MMs do not go far enough in terms of addressing these fundamental issues.

39. **We therefore recommend that further consideration should be given to a smaller and much tighter allocation focused on the existing AELTC facility to the west of Church Road, which would meet the 2012 Regulations in terms of what such policies are expected to encompass. Further MMs to the 'Surrounding Neighbourhoods' part of Policy N9.1 could then set out specific criteria pertaining to Wimbledon Park, or an alternative approach could be for the plan to contain a standalone policy for the park. This modification should address the reasons why the heritage asset is at risk, nature conservation and access, and landscape management and maintenance, in addition to setting out any requirements to improve the environmental quality and accessibility of the park. In our view, such an approach would provide for the conservation, enhancement and ongoing management of the registered park and garden, whilst also ensuring that clear support is given for**

continued long-term investment in AELTC's facilities to maintain its global position as a world class sporting venue of national and international significance."

8.4 These post hearings letters are significant, rejecting the proposed allocation outright and seeking an entirely different approach to the whole of the Wimbledon Park Estate. We note that this is aligned with the comments from LBM DRP in this application. On this basis, far from being given no weight, they should be given great weight in accordance with NPPF which provides:

"48. Local planning authorities may give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

49. However, in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to **justify a refusal of planning permission** other than in the limited circumstances where **both: a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area."**

8.5 The clear conclusion at this late stage in its development is that the Local Plan will not allocate the site of this planning application for development as the applicant (and perhaps LBM) would wish, and by contrast will retain the status and sensitivity of the existing site together with a masterplan for the entire Heritage Park Estate including the golf course. In accordance with NPPF and applicable law, it should be given great weight, and the application rejected on this basis.

9. MOL = Green Belt: is commercial entertainment "sport and recreational use"? 6.2

9.1 The Report suggests that the "exceptions" in NPPF 99(c) 149(b) and 150(e) could be satisfied, such that the facilities proposed are for "outdoor sport or recreation". This is based on a false premise, that the applicant's proposed use as a private entertainment complex where tennis is played as a spectacle for paying visitors amounts to an "alternative sport and recreational use" which can replace the golf course. However, access was available to the public over the entire golf course. Commercial sport as entertainment is not sport or recreation: see Thames Water v Oxford City Council (1999) 1 EGLR 167. This point has been made repeatedly by objectors in the context of the 1993 covenants and never challenged by either the applicant or LBM. Therefore, nothing within the proposal, not even the tennis

courts or hard standings, satisfies the exception to "inappropriate development" for the purpose of NPPF 147.

9.2 In any case, the Report accepts that all the above-ground structures would have a material negative impact on the openness of the site, a conclusion that will be relevant in the enforcement of the 1993 covenants.

9.3 Ultimately the Report concludes that the proposals fail to preserve openness, therefore amounting to harm to the Green Belt (6.2.61). However, the Report then asserts that NPPF 99(c) is satisfied because the "proposals are for alternative sports and recreational use, the benefits and needs of which outweigh the former use" (6.2.62). This is incorrect: as outlined above and elsewhere, sport and recreation are no part of the use of such an entertainment complex. In any event, no case is made that their benefits and needs outweigh the former use; it is merely asserted.

9.4 NPPF 147 overrides NPPF 99 in this case because it is Green Belt. It makes a nonsense of planning policy to suggest that the lesser test in 99 is sufficient for Green Belt. The Report is incorrect.

10. Advice from LBM's Conservation Officer: the development will cause substantial harm 6.4

10.1 The tests for development of heritage assets are demanding: any harm requires clear justification (NPPF 200). The tests differ according to the extent of harm. If there is "mere harm", it must be balanced against the benefits arising (NPPF 202). However, "substantial harm" is far more significant. It should be "wholly exceptional" (NPPF 200 (b)) and consent should be refused "unless it can be demonstrated that the substantial harm … is necessary to achieve substantial public benefits that outweigh that harm" (NPPF 201).

10.2 It is in the interests of the developer to argue for as low a rating of harm to this heritage asset as possible. The test is easier to satisfy. It is the role of the Conservation Officer to uphold conservation policy and the protection of heritage assets. An extract from his opinion is set out in the Report, ending with: "… the harm falls more within the substantial category" (6.4.40). There are no intermediate categories. Harm is either substantial or it is not. The Conservation Officer states that it is. The planning officer would be expected to defer to the Conservation Officer, but the Report suggests there was some debate, the planning officer reaching a contorted conclusion that the harm is in the upper half of less than substantial" (6.4.44).

10.3 Planning officer's justification for their conclusion is based on a serious misapprehension of planning policy. The Report explains that the site has "already been eroded significantly by landscaping associated with the golf course" (6.4.46). That is, it is already in a poor state, so anything that will now be done can hardly make it worse. This ignores NPPF 196: "Where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision".

10.4 The Report makes a serious error: it fails to follow the Conservation Officer's advice and uses an unlawful justification.

11. Substantial harm will not secure substantial public benefits 7

11.1 Since there is clearly substantial harm, it must be necessary to achieve "substantial public benefits". The benefits said to accrue from this development have been critiqued elsewhere (eg Parkside Residents' Association's objections dated 9 March 2022 and 20 February 2023). Heads of terms for the proposed s106 agreement have just been published in the Report. A few examples of why they are simply inadequate to pass the tests at NPPF 201 or even 202 will suffice.

11.2 First and most obviously, to be "public benefits" one might expect the "public" to have been consulted: do they want them or not? No such consultation has taken place. Neither this Association, which represents the entire Wimbledon Park ward, nor any other Residents' Association, nor even the Friends of Wimbledon Park, all bodies very well known to LBM and the applicant, have been consulted. Why are these considered appropriate "public benefits"?

11.3 Off-site works, such as to Church Road or to connect to the existing public park are patently part of this application: if the development did not go ahead, they would not be necessary. Other off site works, for example re-surfacing existing paths in Wimbledon Park might be nice, but not necessary.

11.4 Almost half of the s106 expenditure is in fact destined for de-silting the Lake. This is part of the application site itself. It is not a public requirement or benefit. It happens to be land owned by LBM, who would like to have it done, but for no good reason. The applicant's reasons in justification have been critiqued by Dr D. Dawson as follows:

11.4.1 Restore the original depth. This is not urgent as the lake has lost only 1/3rd of its depth over 250 years.

11.4.2 Prevent the loss of lake area. This is considered trivial, as most of the lake edge is over 30cm deep and so will not soon silt up. There is one tiny area near the island, only, where there may be loss of lake area in decades rather than centuries.

11.4.3 Remove pollutants which might affect lake water quality. This has been described as, at best, "a half-truth", because contaminants in all but the top 10cm of the silt are locked away at depth. They should not be disturbed, and once disturbed, they become a problem. Unless every bit of silt is removed a residual amount would still be in contact with the lake water. In addition, the proposed method of removal pumps the silt with much lake water, dries it in a centrifuge and returns the washings to the lake, so increasing the levels of pollutants in the lake water, which would kill the lake.

11.4.4 Provide flood control. It is understood that LBM used to claim a benefit for flooding both upstream and downstream, but this was a simple misunderstanding of the hydrology. As all the silt is below the level of the outflow weir, there is no effect of silt on flood control.

This was finally confirmed by LBM's dam safety engineers, but the message seems not to have made its way through to others.

11.5 Finally, land near the lake can flood in seasonal conditions which the climate is delivering more and more. While golf could be played most of the year, even if parts of the course had to be closed at times, grass court tennis is to be made available for elite players for just a few weeks a year. To achieve this huge change of use and land management, this application already proposes extensive and intrusive ground works (tanks and swales) to dry out the golf course land to make it suitable for the applicant's entertainment complex. It also proposes far too many tennis courts too near the lake edge. So, it is inevitable that it would like to increase the water-holding capacity of the lake. It could, of course, set its courts at a greater distance from the level of water in the lake, higher or farther away. But that would reduce the number of courts.

11.6 These benefits have such little value to the "public": they cannot begin to be said to be substantial, or indeed to outweigh any harm to the heritage asset.

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Appendix On the next page we have inserted a composite plan which brings together the various features of the applicant's proposal to develop this protected site. Strangely, we could not find such a plan in the application pack, and it seems that LBM did not require one. We have therefore as best we can pieced together the applicant's materials.

Wimbledon Park Residents' Association