GLA planning department 8 June 2024

GLA Consultation on Revisions submitted by All England Lawn Tennis Ground plc to Planning Application LB Merton Ref 21/P2900 LB Wandsworth 2021/3609 Wimbledon Park Golf Club, Home Park Road SW19 7HR (GLA Stage III Mayoral Call in Ref: 2024/0045/S3 and 2024/0047/S3)

Response and Objection on behalf of Save Wimbledon Park, summarising some key planning policy issues

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1. Summary

This application should be rejected on the following grounds:

1.1 The latest changes add nothing to improve this proposal. The public access is illusory.

1.2 The need for this development has not been established, and there are no very special circumstances justifying this harm to MOL.

1.3 Proposed benefits do not outweigh the harm to MOL or to the heritage asset, or the loss of open space.

1.4 The developer's claimed 23% Biodiversity Net Gain is, in fact, a 36% Biodiversity Net Loss.

1.5 The Urban Greening Factor would decline from 0.99 to between 0.82 and 0.70, so failing to meet the London Plan Guidance.

1.6 As the site is an Irreplaceable Habitat and significant harm is caused to biodiversity, planning policy requires the refusal of permission.

1.7 The Public Trust status of the land, and of the Covenants given by the developer should be given weight sufficient to stop this development.

2. Introduction

2.1 Save Wimbledon Park

The Save Wimbledon Park campaign is supported by a large number of national and local organisations,[1] who have been responding and objecting to this application as it has developed since

[1] CPRE London, Friends of the Earth Merton, Save Britain's Heritage, The Wimbledon Society, The Wandsworth Society, Friends of Wimbledon Park, Merton and Wandsworth Tree Wardens; and Residents' Associations for all the surrounding areas, namely Belvedere Estate, Osborne House, Parkside, Raynes Park and West Barnes, Southfields Gardens, Southfields Grid, Southfields Triangle, Sutherland Grove Conservation Area, Victoria Drive Conservation Area, West Wimbledon, Wimbledon East Hillside, Wimbledon House and Wimbledon Park, and the Wimbledon Union of Residents' Associations.

2021. All papers have been produced by volunteers, many of whom have considerable, relevant professional experience, which is highlighted in some particular sections.

2.2 What is the application?

After three years, this is the fourth set of application documents, now totalling 225. The piecemeal approach of the developer has necessarily resulted in a piecemeal response from objectors, which will not make the GLA Planning Officers' task at all simple. Indeed, on the third round, and following the critical Environmental Consultants' Report published by Merton on the planning website[2], the Wimbledon Society urged Merton to require the applicant to start again, such was the confusion over this application.[3] We respectfully repeat that suggestion, but to make the GLA task as simple as possible, in this paper we have reviewed the developer's latest papers and tried to assemble some key planning policy points.

2.3 Previous objections

We believe that all the previous technical objections from our supporter Societies and Associations, including observations on the Officers' Report from both Merton and Wandsworth, will have been passed to the GLA so do not repeat all the detailed arguments here, although reserve the right to revert about any that have not reached the GLA, or which are not given appropriate weight.

2.4 The latest changes, and relevant key planning policies

This consultation concerns the latest changes. However, key planning policy hurdles have still been failed. These comments have been informed by some new papers in this fourth set from the developer and have had the benefit especially of the research and insights of planning, architectural, tennis, environmental, heritage and legal experts who have provided their advice and experience *pro bono*.

2.5 Accompanying papers

This Response and Objection is submitted in coordination with expert submissions of the same date from Richard Rees RIBA and Ken McFarlane RIBA (addressing Green Belt Policy, Very Special Circumstances and "Need"), from Parkside Residents and their chair Susan Cooke (addressing Social, Community and Economic Benefits), from Environmentalist Dr David Dawson (addressing Biodiversity Net Gain and other Environmental issues) and from Mark Service (providing a Heritage assessment).

3. Changes in the latest application

3.1 Greater clarity of plans

We are glad to see that, for the first time and perhaps thanks to the GLA's requirements, the developer has now produced plans which show on single sheets the effect of their landscape interventions across the entire site.[4] However, only two minor changes are now proposed: "increased public access" and "wider heritage benefits". The former is illusory, as we show at 3.4 below, and the latter is worth nothing, as explained at section 8 "Heritage at risk" below.

3.2 Still no alternatives and no consultation

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[2] JAM Review of revised Environmental Impact Assessment for Merton, September 2022.

[3] Wimbledon Society to Merton 23 November 2022.

[4] For example, LUC GLA Planning May 2022 v Planning April 2024, LUC Grass and Soil Stripping Works whole site 22.04.24, Buro Happold GLA Proposed Cut and Fill Site Plan 24.04.2024.

There is still no change to the buildings, the number of courts or the layout of the development. Over three years the developer will have seen thousands of objections, a 19,000-strong petition, and a Wandsworth Officer's Report, and will have heard the Wandsworth Planning Committee meeting, all urging them to think again. They do not appear to have considered alternatives or listened to concerns. In their own note concerning Very Special Circumstances (July 2021), obtained by The Wimbledon Society in a Freedom of Information request from Merton, the developer admits that Interested Parties with whom discussions should be had include Local Residents and local organisations. Since then, it has made no effort to discuss constructively any proposals or concerns with any of the local political representatives, residents, societies, or associations.

3.3 Has the basis for the development changed?

The claim is made that the championships will be expanded.[5] How can this happen? The same championship, with the same number of players, will take place over the same time at the same location. There are no other proposals. The only additional performances in SW19 will be the qualifying competition which will move, to the detriment of Roehampton: this is relocation, not expansion. Further, the developer asserts that "without a qualifying event, the Championships cannot take place".[6] This assertion is not credible: there is no evidence of any attempt to explore any alternatives to SW19 for the qualifying event, which could take place anywhere.

3.4 Public Access?

In support of the claim to offer "increased public access", there is now the promise of public access to the northern-most tip of the former golf course and a temporary link to the side of the public park. Both promised public areas are described as "permissive", that is retained by the developer, but they are still erroneously claimed to be accessible on a basis which is "permanent" or "in perpetuity". The public access arrangements are proposed to be controlled by a s106 agreement. By s106A (4), the obligation can be overturned after 5 years: https://www.legislation.gov.uk/ukpga/1990/8/section/106A. In view of this developer's disregard of its 1993 purchase obligations relating to the future of the site, mentioned in previous objections, this is a serious risk, and renders the promise illusory. The developer has made no proposals to alleviate this concern, despite a request to consider a community or public trust.

3.5 New parks or building sites?

The "permissive parks" both include huge hard standings on which the "pop-up" entrance areas will be built each year. These will be building sites, inevitably excluding the public, during the summer months. A new public toilet is proposed at the Northern end, but this had previously been offered in the draft S106 Heads of Terms in the two Borough Planning Officers' Reports, so is not new. In the Southern area public toilets will only be provided in the former golf club house during its opening hours. The developer will continue to need to invade and disrupt the public park for the Queue and other championship facilities despite having so much of its own land available, continuing to cause harm to the public park.

3.6 Bio-Diversity Net Loss and reduced Urban Greening Factor

The Developer has re-calculated its Bio-diversity Net Gain and Urban Greening Factor figures and offers them for a third time, but unfortunate mistakes and undue optimism have still prevailed. We have calculated both, with the benefit of expert advice, and conclude that **far from a Net Gain, there is a**

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[5] Rolfe Judd Planning summarising the Deputy Mayor's reasons for calling in (GLA cover letter page 4), and Quod para 7, April 2024).

[6] Quod para 6, page 9, April 2024.

Biodiversity Net Loss of 36%, and an Urban Greening Factor down from 0.99 to between 0.82 and 0.70.

4. Metropolitan Open Land: NPPF 142-156, and Open Space

4.1 Inappropriate Development: Very Special Circumstances

"The essential characteristics of Green Belts [here MOL] are their openness and their permanence" (NPPF 142). This proposal preserves neither. Buildings and works of all kinds are inappropriate, and once built, the openness of the land is lost for ever. The developer concedes that it proposes inappropriate development and agrees that it must establish "very special circumstances" (NPPF 152). This requires the developer to justify the "need" for this development.

4.2 What is the Need?

The latest set of application documents still fail to explain the "need": the developer has merely continued to advance a general "pinnacle of sport" argument, an assertion it has promoted since 1993 or even earlier. Uniquely played on grass, this is the most successful global grand slam tournament, which has just published its best ever results with TV viewing figures exceeding all other grand slams.[7] It is also the only grand slam owned not by its national tennis body but by a private members' club. Already claiming to be at the "pinnacle", there is no need for the developer to increase its tournament area by 200% for a mere 20% increase in footfall, and for the same size of championships.

4.3 Expert opinion doubts any need

This paper is accompanied by a more detailed paper from Richard Rees RIBA, a tennis master-planner and Olympic architect who has contributed *pro bono* his unique relevant professional expertise and experience, and from Ken McFarlane RIBA, an architect with specific leisure and hospitality experience who is chair of the Wimbledon House Residents' Association.

Richard Rees was design team leader at BDP for the 1992-1997 AELTC Long Term plan, New Number 1 Court, and Henman Hill. He was also consultant tennis architect for the Sydney and Athens Olympic Tennis Centres and worked on the tennis venues at the Beijing and Rio Olympics as well as the Kuwait International Tennis Centre. He also designed the Guangzhou Tennis Centre.

Richard Rees has examined what is claimed to be the need and concluded that far from justifying any need, the proposal is gross over-development. It will make public safety in and outside the grounds much worse. It will destroy the quintessential AELTC offer and turn "Tennis in an English Garden" into "Tennis in an Industrial Complex". It fails to pass the test required for development in the green belt.

Richard Rees and Ken McFarlane have also assessed the architectural treatment of the proposed stadium finding it to be at least as large as the front of Buckingham Palace or the bulk of the Royal Albert Hall, and with the existing development creating a 'canyon' effect in Church Road.

4.4 Could this be Sporting Intensification?

The developer has sought to argue that NPPF 154(b) will apply, but proposes professional tennis courts, all built to championship standards, far exceeding the construction required for public courts or use. While "up to" 7 may be available for a short time between July and September, 32 will never be available

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[7] https://www.statista.com/statistics/1396457/tennis-grand-slam-fans-worldwide-by-tournament/
https://www.thetimes.co.uk/article/b54ada63-3326-4c41-8b40-b7d593a79b29?shareToken=cdeb236f208a60218f1c97145667e1af

to the public, so cannot be said to be for sport or recreation (Thames Water Utilities v Oxford Council (1998)). Nor will the facilities "preserve the openness" of the land as required by the NPPF. Patently the stadium and ten other buildings cannot, but even the courts require dressing which, as the Wandsworth Officer's Report observed, falls foul of the Court of Appeal decision in Skerritts v SoS ETR (2000). See also the Court of Appeal decision in Redhill Aerodrome v SoS CLG (2014), which established that even runways and hard standings were inappropriate development in the Green Belt.

4.5 Preservation of Open Space

Before the developer closed the golf course, the whole of it was available to some 900 members, and all Merton residents (without a membership requirement and paying 25% of green fees). It was "existing open space, sports and recreational ... land" which "should not be built upon unless ... the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of ... use".[8] This private members' club's proposed use for professional entertainment is not an adequate substitute for the closure of the entire golf course. No buildings are required to turn the former golf course into a public park, and the proposed public use of the private area of "up to" 7 tennis courts for about 6 weeks is not a substitute for full public use of the entire area all year round. The application fails this NPPF test. Even if the test is thought to have been satisfied, it is still necessary for "benefits" to "clearly outweigh" that loss. It is submitted, supported by a comprehensive analysis of the alleged benefits, that they do not "clearly outweigh" the loss.

4.6 Conclusion on Green Belt policy

This inappropriate development has not been justified on the basis of need, fails to meet the test of Very Special Circumstances and shows an unfortunate disregard for the importance of this precious Green Belt site and Open Space.

5. Proposed Benefits

5.1 Clearly outweighing the harm to Metropolitan Open Land and Heritage Assets?

Whether or not the "need" is justified, the benefits must also "clearly outweigh" the harm, not merely to the MOL itself, but any harm (NPPF 153) and also the loss of the open space (NPPF 103). This test is even higher than the heritage test (NPPF 207 and 208), where the harm to be balanced against the benefits is restricted to the asset itself: see the Court of Appeal decision in Redhill Aerodrome v SoS CLG (2014). By way of just one example of all harm which this development would cause, other objections have drawn attention to misleading construction and other traffic figures[9], with its consequential harm to air quality. Wimbledon and Southfields already breach WHO guidelines on NO2 and PM2.5.

5.2 Double-counting of benefits?

The developer's arguments about "proposed benefits" are already doing treble duty in trying to satisfy both the very high MOL and Open Space tests and also the Heritage test. We observe below, based again on expert professional advice, that the Heritage baseline is uncertain because the impact has not been assessed, so the harm to the significance of the heritage asset cannot be fully assessed. We suggest that there is a considerable risk that the developer is presenting a reduced impact of the development. With these high hurdles in mind, and such a weight of policy against it, the developer

[8] NPPF 103 (c)
[9] Wimbledon Society objection 20 July 2022

might have been expected to provide at this fourth attempt, some truly significant enhanced benefits, but it has not.

5.3 The benefits proposed are inadequate and inappropriate

The latest changes to the 'community benefits' proposed add little or nothing to what was included in the original application. There is also an unhelpful lack of clarity as to the likely availability and scope of offsite 'enhancements' to be funded by the developer and previously summarised, with costings, in heads of terms for S106 agreements in the Reports of the two Borough Planning Officers. The case for 'economic benefits' (unchanged despite the latest revisions and delays in construction schedules) relies heavily upon the Championships' existing economic impacts, which will surely continue anyway, yet claims about 'enhancing London's global competitiveness' are still unsubstantiated. The projections also misunderstand the operational limitations of the Qualifying event and fail to offer any effective cost/benefit analysis of the effects of the transfer from, and closure of Roehampton. A detailed analysis by a retired property lawyer at Parkside Residents' Association, working with an accountant, accompanies this paper.

5.4 Conclusion on benefits v harm

The permanent harm to Green Belt, and other harm, and the loss of Open Space, are not 'clearly outweighed' by the proposed benefits, nor is the harm to the Heritage Asset outweighed. No case for any 'need' to extend the current highly successful (and well-loved) tournament complex has been made, and the displacement of the qualifying tennis from one successful venue has not been justified. This application should therefore be refused.

6. Biodiversity Net Gain? In fact, a Loss

6.1 The entire site will be developed over 8 years

The golf course is remnant parkland, a highly protected Irreplaceable Habitat.[10] The project affects the entire golf course. The developer's plans (Grass and Soil Stripping Works – Whole Site 51365-LUC-02140/P03; Proposed Cut and Fill Site Plan 51365-BHE-01300/P05) now offered in this consultation, illustrate for the first time that not a single square metre will be untouched by soil movement or buildings. The 8-year length of the project will destroy habitats, breeding and migratory patterns of a large number of protected creatures for many years, causing permanent, irreplaceable harm. Will the creatures even return after such a lengthy and damaging human intervention?

6.2 Re-calculation proves net loss

The Developer has re-presented its Bio-diversity Net Gain and Urban Greening Factor figures for a third time, but unfortunate mistakes and undue optimism have still prevailed. We have calculated both with the benefit of expert advice, and conclude that far from a Net Gain, there is a Biodiversity Net Loss of 36%, and an Urban Greening Factor down from 0.99 to between 0.82 and 0.70. This significant harm is sufficient alone to justify refusal.[11]

6.3 Environmental Expert for Save Wimbledon Park

We are most fortunate that an eminent professional environmentalist, with many years of senior experience at the GLC, has taken an interest in the Wimbledon Park area for 40 years. Dr Dawson has provided his unique expertise *pro bono*, and his paper is also attached. He has carried out a

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[10] "Development resulting in the loss or deterioration of irreplaceable habitats … should be refused", NPPF 186(c).
[11] NPPF 186(a).

professional appraisal of the entire parkland proposals, based on this fourth set of application drawings, up to date government guidelines on calculating gain, a phased building period for this 8-year project, and the Oxford University/Agile approved checklist. His detailed expert report is submitted separately.

6.3 Public Data for an independent assessment

We were surprised by the GLA's initial Stage 1 response regarding BNG, and so urge the GLA now to undertake an independent professional assessment. All Dr Dawson's data are on the public record, published and/or with GIGL, and his Condition Sheets and Biodiversity Metric Calculation Tools have been supplied to the GLA along with his paper.

7. Heritage impact has not been quantified

7.1 Review of the Heritage case

This paper is accompanied by a more detailed paper on Heritage issues. Briefly, the developer has failed adequately to illustrate and demonstrate the impact of the proposed development on the heritage assets. Perhaps this omission is favourable to the developer. Without a full impact assessment, all developer arguments about the level of harm to the significance of the heritage asset must be viewed with caution. That level should probably be increased following an independent assessment. This failure to show the true base case renders the developer's assessment of harm to the heritage asset inaccurate and misleading. The Merton Conservation Officer, who will know the area, assessed the harm as "substantial", but was over-ruled. We respectfully invite the GLA to review the base case accordingly.

7.2 Heritage expert

The accompanying Heritage Assessment has been contributed by Mark Service, a local Southfields resident and volunteer with Save Wimbledon Park who is a Principal Heritage Consultant with 12 years' experience of historic building, landscape and archaeological appraisals at a major international consultancy.

7.3 Heritage conclusion

As further explained in the Heritage Assessment, this application should be paused while a full and independent assessment is made, after which, we submit, it should be rejected on heritage grounds.

8. Heritage at risk and Merton's Local Plan

8.1 Park "at risk": how can this development save it?

Wimbledon Park is a Grade II* listed heritage park, one of only three of this Grade in the whole of Merton and Wandsworth (Cannizaro and Battersea are the others). It is on Historic England's "at risk" register mainly due to its divided ownership and lack of a comprehensive management programme. The developer claims that the recent proposal to open access between its northern boundary and the public park outside the championship period will address the lack of a cohesive vision for the RPG and address land fragmentation issues (GLA Landscape Planning Addendum para 3.1.2 page 27).

8.2 "At risk" and the Merton Local Plan solution

Historic England and Merton have proposed that the divided ownership problem can only be overcome through a comprehensive management agreement between all landowners of the RPG, as in Merton's emerging, near final, Local Plan. There is no such agreement in place. Whether or not this latest

version of the Local Plan is put into effect, the developer's assertion that a link between its golf course land and the public park would address the issue, without any evidence of a management agreement between landowners, is not credible.

9. Other Material Considerations

9.1 The 1993 Covenants.

9.1.1 The Wimbledon Park Residents Association and The Wimbledon Society have made many objections that the former golf course land is bound by restrictive covenants to which the AELTC committed when it acquired the freehold from Merton in 1993. Those covenants maintain the openness of the land, prevent development and restrict use. They were imposed for public benefit and are held by Merton as trustees for the public. Unlike private restrictive covenants (which are generally not material considerations) they are a public right which places a block on development and is a material consideration in this planning application.

9.1.2 The arguments referred to the Holocaust Memorial case where the Court of Appeal has refused the Government leave to appeal the first instance decision.[12] The Government has been pursuing primary legislation, paused now for the general election, a clear admission that the restriction on development of the land in question was a material consideration.[13]

9.1.3 Neither the developer nor Merton have ever sought to argue that the 1993 covenants are not binding or do not apply to this proposed development.

9.1.4 The planning decision-maker must take these covenants into account, and give them due weight in their decision, since they block the development.

9.2 The Public Trust of Wimbledon Park

9.2.1 The Wimbledon Park Residents Association and The Wimbledon Society have also made various objections, including with the benefit of legal submissions by George Laurence KC and Russell-Cooke, solicitors (all acting *pro bono*), about the public trust under which the Park is held. We expect that all of these papers have been made available to the GLA. This issue has a significant bearing on the ownerships of both Merton and the AELTC which the planning decision will need to acknowledge.

9.2.2 The Wimbledon Park Estate was acquired by the Wimbledon Corporation in 1915 and on local government reorganisation in 1965 transferred to Merton by Article 16(2) and Schedule 4 of the London Authorities (Property etc.) Order 1964. Once transferred to Merton, it was specifically 'appropriated' by Article 44 and Schedule 5 Part II of the London Government Order 1965 to be held under section 164 of the Public Health Act 1875. This applied the statutory trust, meaning that Merton have held and continue to hold Wimbledon Park on trust.

9.2.3 The Wimbledon Park Estate had been held by the Wimbledon Corporation as a "local and public advantage" for the people within its area, the people of Wimbledon, pursuant to the Wimbledon Corporation Act 1914. There is no evidence that the beneficiaries of the statutory trust were to be any different after 1965: it must be inferred that the trust continued for the benefit of the people of Wimbledon.

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[12] In the words of Lady Justice Andrews in the Court of Appeal on 20 July 2022, when dismissing the Government's attempt to appeal the Holocaust Memorial case, a block on development (held to be a material consideration) cannot be "wished away".

[13] https://www.gov.uk/government/publications/dluhc-accounting-officer-assessments/uk-holocaust-memorial-and-learning-centre-revised-accounting-officer-assessment

9.2.4 The effect of this public trust issue is twofold. First, and this is not disputed by Merton or the developer, Merton hold the park and lake on trust for the public. Their powers to deal with land are severely limited by the Local Government Act 1972 as amended. Day v Shropshire in the Supreme Court (2023) established that failure to comply with such legislation is a material consideration in the planning process relating to the land. Since the LGA 1972 provides very few powers to the local authority as statutory trustee, the limit of those powers is also material. The trustee duties include the enforcement of the 1993 covenants.

9.2.5 The second point is that Merton sold the freehold of the golf course in 1993 to the AELTC ignorant of the statutory trust basis on which they held it. That, also, has not been disputed by Merton or the AELTC. Day v Shropshire further established that failure to comply with the statutory requirements on such a sale means that the buyer takes and holds the land on the public trust. This aspect is in legal dispute with Merton and the AELTC and may well be pursued in litigation if it cannot be resolved.

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