

Notes on the sale of the freehold of the golf club to the All England in 1993.

The golf course is part of the Wimbledon Park Open Space, the heart of Capability Brown's Park. It's protected as Metropolitan Open Land (=Green Belt), Grade II* listed, Conservation Area and Site of Importance for Nature Conservation (SINC). When Merton decided to sell in 1993, they committed to maintain it as open space. Both Merton and the All England assured the public that there would be no development, covenanting that the land would not be used except for leisure, recreation and open space, nor built upon except as ancillary to recreation or open space use.

The covenants were given to Merton as the owner of the Lake and Park, which they hold under a trust for the public. Merton must enforce the covenant to protect the interests of the public and to honour their 1993 commitment.

The All England now propose a covered 8,000 seat stadium, 10 other buildings, 38 purpose built tennis courts and 9kms of roads and paths, designed for their private championship and tournament commercial use. This use and the buildings would all breach the covenants, but the covenants do not prevent some reasonable leisure, recreational or open space use of the land, and the All England must come up with suitable alternatives.

Merton Council

27 April 1993 Merton Policy and Resources Committee

Resolved to declare the freehold of the Golf course surplus to requirements and sell it "*subject to ... access available to public around the lake at the earliest date ... covenants preventing the use of the land otherwise than for leisure or recreation purposes or as an open space and covenants preventing any building except ancillary.*" Merton made a ... "*Commitment to the open aspect of the Golf Course in the event of any disposal*".

14 July 1993 LBM Ordinary Council Meeting Minutes*

The Chair of the Policy and Resources Committee (Councillor Colman, who was also Leader of the Council) stated, for the record and the minutes, the Council's position on the future status of the Wimbledon Park Golf Course land:

"I thank Councillor Philip Jones for advance notice of this question which resulted from our consultation with the Wimbledon Society who sought a clear statement from the Council about its intentions for the Golf Club site.

I am very pleased and proud to place on record our commitment to retaining the open space at the Wimbledon Golf Course regardless of the outcome of our bid to put the freehold out to tender.

As our tender document will clearly state and as I have said repeatedly, I am totally committed to ensuring this area remains part of Merton's green space. It is designated as Metropolitan Open Land. We are taking the necessary steps to make the space a conservation area. We shall be using tree preservation orders throughout the area. We are placing covenants on the sale of the freehold to

prevent any owner of the land being able to develop it with houses or any other undesirable building development.

Councillors, I believe that shows our commitment. Now it is enshrined forever in Council minutes. It will show future Councils and future residents that when we decided to sell this land, we did so ensuring it would be kept as open space and we did so determined that the next owner and any future owner would be denied forever the opportunity to use this space for any development.”

12 August 1993 Sales particulars issued by Merton to prospective buyers including the All England

5.2 The conveyance will contain (a) a covenant preventing the use of the land otherwise than for leisure or recreation purposes or as open space, (b) a covenant preventing any building on the land other than building which is ancillary to a recreational or open space use and which will not impair public appreciation of the extent or openness of the land and (c) as soon as golf ceases to be played, a dedicated walkway for public access around the Lake.

Press cuttings

23 September 1993 Wimbledon Borough News

John Currie, All England Chairman: *“We completely understand and support everyone’s determination to keep the land open and we purchased the land on that basis.”*

Tony Colman, Merton Council Leader: *“Respecting the wishes of local people, this council is resolute that the land will be retained as open space. All England has bought the land knowing this is our policy and is aware that we would not allow development of the site.”*

24 September 1993 The Wimbledon Informer

Tony Colman, Merton Council Leader: *“The golf course land will be retained as open space. The whole stretch has been designated Metropolitan Open Land. We have declared it a conservation area and placed strong covenants on the sale.”*

John Currie, All England Chairman: *“We completely understand and support everyone’s determination to keep the land open and we have purchased the land on that basis.”*

The Covenants

Transfer 23 December 1993. The All England covenanted for the benefit of Merton’s adjoining freehold in the Park and Lake:

- 1. Not to use the [Golf Course] other than for leisure or recreational purposes or as an open space.*
- 2. No building shall be erected on the [Golf Course] other than a building or buildings the use of which is ancillary to the recreational or open space use referred to in para*

1 and which building, or buildings shall not impair the appreciation of the general public of the extent or openness of the property.

3. As soon as golf ceases, to dedicate a public walkway around the Lake.

Comment: The All England signed up to the covenants and now propose to break them. Their intended use of the proposed tennis and other facilities would breach paragraph 1, so the stadium and other buildings also breach paragraph 2; the proposed boardwalk will cut across the Lake and none of the walkways will be dedicated to the public, breaching paragraph 3. All the land will remain private; the public might be admitted to part with the permission of the All England which they could withdraw at any time.

The case of *Thames Water v Oxford City Council* (1999) 1 EGLR 167 directly concerned a restrictive covenant limiting use to recreational purposes which a Council wanted to circumvent by building a stadium. At p170: *“The commercial exploitation of the game of football by hiring players and charging spectators is not itself a recreational purpose. Nor is it merely ancillary to the recreational purpose of the spectators.”*

Substitute tennis for football and it is clear that the All England’s proposal breaches the covenants: the primary justification and use of the new private tennis complex is commercial for the championships and qualifying, not leisure or recreation, nor would it be open space.

Merton’s freehold of the Park and Lake

Merton hold Wimbledon Park and Lake as Open Space, just as they did the Golf Course. This is on Trust for the public, under the Public Health Act 1875. They cannot release or waive or give any consent to breach the covenant without breaking that Trust and their 1993 commitments. The covenants will still stand despite any planning permission. They *do not prevent any* development, but the All England must think again, putting forward a heavily scaled-down alternative use and scheme. The engagement of local residents will be fundamental to Merton’s consideration of any alternative.