

**From:**  
**To:** [Future Merton;](#)  
**Cc:**  
**Subject:** Merton Local Plan  
**Date:** 15 March 2024 22:16:26  
**Attachments:** [WPRA response to MMs Final 15 March 2024.pdf](#)

---

Dear Tara and colleagues at Future Merton.

Following the main modifications and request for comments, I attach a representation from Wimbledon Park Residents' Association. The MM N8.1 seems to be by far the largest change in this Plan. We would welcome a discussion about it.

Kind regards

For Wimbledon Park Residents' Association



To Future Merton, cc Programme Officer

15 March 2024

### Merton's Local Plan Main Modification LBM31

This paper responds to Merton's request of 2 February 2024 for views on the latest Main Modifications proposed to their Local Plan. It deals with the new policy N8.1 for Wimbledon Park, and its implications for the rest of the Plan.

For the Wimbledon Park Residents' Association,

, Chairman

, Planning Committee

### Table of Contents

1	Proposed Solution: Heritage at Risk and Landscape Management Plan	Page 1
2	Background and Reasons for our Approach	Page 3
3	Specific adjustments to the Main Modification	Page 6
4	Sport and Recreation: further Comments	Page 14
5	Can a Landscape Management Plan be effective?	Page 15
6	The 1993 Covenants and the Public Trust of Wimbledon Park	Page 17

## 1 Proposed Solution

1.1 Site Allocation Wi3 of part of Wimbledon Park having gone, the Local Plan now tries to address "Heritage at Risk" of the whole of Wimbledon Park at considerable length in N8.1. For the reasons discussed in section 2, it is disproportionate and ineffective. We respectfully suggest that it makes the Plan unsound, and so propose a simpler, effective solution.

### 1.2 Heritage at Risk

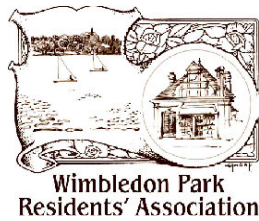
The problem of "Heritage at Risk" can be simply resolved at an appropriate place in the Plan.

#### 1.2.1 Changes requested: *delete N8.1 altogether* and *insert after D12.5 (f)*:

***D12.5 (g) Proposals affecting any heritage asset on the "at risk" database must address and resolve the reasons why it is on that database.***

#### 1.2.2 Reasons:

1.2.2.1 Policy D12.5 already deals with Heritage but does not currently mention Heritage at Risk. At the end of D12.5 (f) a new Modification now provides: "Proposals should not prejudice the future restoration of designated and non-designated historic parks and gardens." This is not ambitious enough. It does not respect and would not resolve any "at Risk" issues.



1.2.2.2 There are 21 sites within Merton on the Historic England “Heritage at Risk” database.<sup>1</sup> None of the other 20 sites are singled out, even though 5 are in St Mary's Churchyard, Wimbledon, and another 4 in the environs of Merton Priory. The general approach of a Borough-wide policy must be the most appropriate for HaR assets.

1.2.2.3 The HaR database is a living creature. Assets are added and removed all the time as Historic England re-assess them and modify the stated reasons for an asset appearing on the database.<sup>2</sup> Work may be undertaken to alleviate problems associated with heritage assets, the effect of which must be re-assessed from time to time. The lake at Wimbledon Park is a good example of this, as illustrated in the MM N8.1.29. A 15-year Plan Policy which identifies a single location, at a single point in time, based on inadequate and potentially changing circumstances is disproportionate, uncertain, and unsound.

1.2.2.4 N8.1 does not follow Historic England’s advice.<sup>3</sup> It provides merely that a development proposal which includes certain features “will be supported”. This will not secure the objective. Merton’s lack of support through the planning process will not prevent a developer from securing consent in some other way: an Inspector on appeal would not regard “support” to mean “require”, so Merton’s conditions may not be delivered.

1.2.2.5 Merton’s proposed “support” would be promoting development to resolve the Heritage at Risk issue. Resolution should not be contingent on development. It would be a contradiction in terms to rely upon a developer’s offer of funds or other benefits associated with its planning application to protect a site such as Wimbledon Park for which the planning policy barriers to development are so high. The development process cannot fulfil the objective alone, hence our proposal at 1.3 below.

### 1.3 Landscape Management Plan

We share the general frustration exhibited by Historic England, many local and other national bodies, and the entire community, that the whole of Wimbledon Park deserves much better. We would welcome an initiative comprising all the landowners, interested parties and bodies, and both Merton and Wandsworth Councils, to achieve this.

1.3.1 **Change requested:** insert in the Surrounding Neighbourhoods section for Wimbledon:

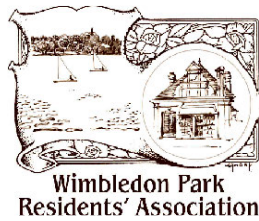
***(r) Wimbledon Park is an important open space, designated MOL, Grade II\*, SINC and others, but it has been on the Heritage at Risk register since 2016. To address this Risk, and to ensure that public access and sporting use is perpetuated, we will secure the***

---

<sup>1</sup> <https://historicengland.org.uk/advice/heritage-at-risk/search-register/results/?advsearch=1&Lpa=Merton&searchtype=harsearch> accessed 26 February 2024

<sup>2</sup> Compare for example the wording of HE’s listing of Wimbledon Park in 2016, 2021 and 2023.

<sup>3</sup> “The allocation policy would set a more robust strategy for the conservation and enhancement of the historic environment if the criteria were presented as *requirements rather than guidance.*” (*emphasis added*). Para 2.10 of HE’s Hearing Statement 19 May 2022.



***production of a Landscape Management Plan and further designate Wimbledon Park as a Local Green Space.***

and further supporting text:

***9.1.36 We will complete the Landscape Management Plan for Wimbledon Park within 1 year of the adoption of this Plan with the agreement of London Borough of Wandsworth, all landholders, Ward Councillors, community groups, Civic Societies and Residents' Associations neighbouring, or having an interest in the use of, the Estate. The Plan will address the "at Risk" concerns and be paid for out of Merton Council funds. We will procure the implementation of the Landscape Management Plan within 5 years of the adoption of this Plan.***

### **1.3.2 Reasons:**

1.3.2.1 It would be proportionate to include Wimbledon Park in the Surrounding Neighbourhoods section of the Chapter about Wimbledon, and briefly to explain its status.

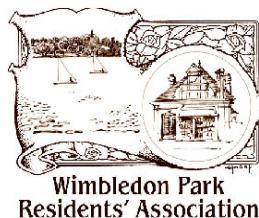
1.3.2.2 The N8.1 proposals for a Landscape Management Plan give no confidence that this can be legally achieved and that it has the backing of the Council. Perhaps for that reason, the proposal is at best a vague and misleading aspiration.

1.3.2.3 To be effective, the Landscape Management Plan should be more than aspirational, and Merton must be committed to it. Resolution of the Heritage at Risk issue should not be contingent only on development, for the reason mentioned at 1.2.2.5 above.

1.3.2.4 While a Landscape Management Plan might be a useful means to achieve the objective, there is no guidance in N8.1 about its terms of reference or brief, beyond addressing the "Heritage at Risk" problem. Since "divided ownership" is the key issue, it must start with the owners. How will Merton ensure that it will be agreed? See also section 5 below.

## **2 Background and Reasons for our Approach**

2.1 After a lengthy series of Stages, representations and hearings in the seven-year process for this Plan, we are grateful to the Inspectors for rejecting the extension of development Site Allocation Wi3. Wimbledon Park is "chalk" to the "cheese" of the AELTC's existing private tennis complex. We are also grateful that the Inspectors have rejected the reduction in MOL on the existing AELTC site west of Church Road. We do not see the need to comment further but, if other parties re-visit either of those changes, reserve the right to make further representations.



2.2 Following the Hearings in 2022 there was just one residual concern about Wimbledon Park: it is on the Heritage at Risk register, about which “something must be done”.

2.2 The policies set out generally in the Local Plan already cover the key features of Wimbledon Park, for example, Metropolitan Open Land, Heritage, Site of Importance for Nature Conservation, Conservation Area, Open Space, Green Corridor, Archaeological Priority, Sports, and Recreation. However, MM N8.1 disproportionately draws attention to some only of these features, ignores others, and includes considerable detail of temporary, passing interest but not of 15-year value. It also continues to promote development according to the AELTC planning application for only part of the Estate, which was dismissed by the Inspectors at the Hearings in 2022.

2.4 MM N8.1 occupies 10 entirely new pages in the Plan, while the whole of Wimbledon and surrounding areas is dealt with in text, pictures, maps and further supporting text in just 17 pages. If each of the issues relating to other places around the Borough were treated in the same way as Wimbledon Park, the Plan should run into thousands of pages.

2.5 This Local Plan has been the subject of four Stages of Public Consultation over the last 7 years.<sup>4</sup> During this process, nothing was proposed about Wimbledon Park except at the instigation of the AELTC for an extension to their existing private tennis complex. Their first representation at Stage 1 concerned only the existing complex west of Church Road, seeking a Site Allocation which became the original Wi3.<sup>5</sup> In their second, Stage 2 response, they welcomed the inclusion of their existing complex as Wi3 and told Merton that they were about to acquire the golf club.<sup>6</sup> In their third, at Stage 2A two years later, they explained that they had bought the golf club and were making plans to develop it, and so welcomed the extension of Wi3 to include the golf course as well.<sup>7</sup> It was the extension of this allocation and the incorporation of AELTC-proposed drafting and requirements which was the subject of our, and other, objections in 2021 and 2022, and the subject of extensive hearings before the Inspectors.

2.6 According to the Local Plan Examination Library (the only materials available to the public) Historic England became involved on the record only when they responded to Inspectors’ questions in relation to Site Allocation Wi3, supplying a Hearing Statement dated 19 May 2022 and, later, a revised Statement of Common Ground in September 2022. Their observations were concerned only with the Heritage status of the golf course, and whether Wi3 was sound. They concluded that it was not.

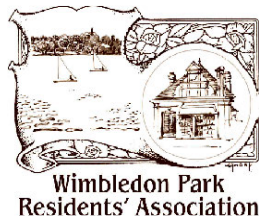
---

<sup>4</sup> Stage 1 2017/18, Stage 2 2018/19, Stage 2A 2020/2, Stage 3 2021.

<sup>5</sup> Rolfe Judd (on behalf of AELTC) letter 8 January 2018.

<sup>6</sup> Rolfe Judd letter 20 December 2018.

<sup>7</sup> Rolfe Judd letter 20 January 2021.



2.7 Merton's reason for their introduction of MM112, the new policy N8.1, is "To achieve an effective and justified policy, which is consistent with national policy relating to the conservation of heritage assets (section 16 of NPPF) and the natural environment (section 15 NPPF), and to secure general conformity with the London Plan in respect of provisions relating to Metropolitan Open Land."<sup>8</sup>

2.8 We understand that in creating MM N8.1, Merton have followed the Inspectors' Post Hearings letter INSP22 paragraph 39. That letter denied a Site Allocation, which would have encouraged development, and explained:

"... 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."

2.9 It seems that Merton have sought to introduce MM N8.1 to satisfy the first requirement ("This modification should address the reasons ... park and garden"). However, the second ("whilst also ... facilities") is provided for in the rest of the Plan which already supports the AELTC, both through the revised Site Allocation Wi3 for their existing facilities west of Church Road, and through Text and Policies at 9.1.27, 13.9.5, IN14.3, and 14.3.38-40.

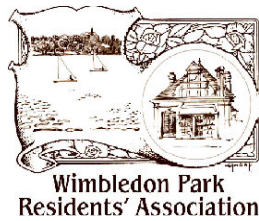
2.10 Is it possible that Merton have interpreted the second, support for "continued long-term investment in AELTC's facilities", to refer still to the golf course, despite the withdrawal of the site allocation? Wi3 having been restricted, this does not seem correct, appropriate, or fair. If there is any misunderstanding about this, we would welcome clarification. If that is in fact Merton's intention, then a further hearing must be required: it would not be acceptable for the effect of Site Allocation Wi3 to appear in another guise.

2.11 At this very late stage, a year after the post-hearings' letters, detailed changes of the magnitude now proposed by Merton are out of proportion with all other Main Modifications and the expectations of all consultees and of due process. N8.1 now proposed would need far more analysis and scrutiny than this stage permits. We therefore suggest something much simpler to make the Plan sound and effective.

2.12 While we share the Inspectors' desire to avoid any further hearings, it would not be right, or in accordance with due process, for Merton to press ahead with N8.1 without a thorough discussion and analysis of it. We stand ready to appear at any hearing if required. In the meantime, we should be happy to discuss these representations with Merton.

---

<sup>8</sup> LBM29 Schedule of Main Modifications to Merton's Draft Local Plan – January 2024 Page 36 of 165.



### **3 Specific adjustments to the Main Modification now proposed.**

3.1 We urge Merton Council and the Inspectors to adopt our preferred, simple approach set out at section 1 above. If despite our concerns, this is not accepted, then we need to propose several changes to N8.1, as follows.

#### **3.2 N8.1**

##### **3.2.1 Change requested:**

*Delete the opening words of this Policy* and substitute:

##### **WIMBLEDON PARK – POLICY N8.1**

***Wimbledon Park is an important open space, designated MOL, Grade II\*, SINC in a Conservation Area and an Archaeological Priority Area, but it has been on the Heritage at Risk register since 2016. To address this Risk, and to ensure that public access and sporting use is perpetuated, we will secure the production of a Landscape Management Plan and further designate Wimbledon Park as a Local Green Space.***

***We will require development proposals for any part of Wimbledon Park to address and resolve the reasons why Wimbledon Park is on the Heritage at Risk Register in accordance with Policy D.12.5(g), and to recognise and preserve its special status as designated protected land. Once Wimbledon Park has been removed from the Heritage at Risk database this requirement will cease.***

***Whether or not suitable development proposals come forward, we will complete a Landscape Management Plan for Wimbledon Park within 1 year of the adoption of this Plan with the agreement of London Borough of Wandsworth, all landholders, Ward Councillors, community groups, Civic Societies and Residents' Associations neighbouring, or having an interest in the use of, the Estate. The plan will address the "at Risk" concerns and be paid for out of Merton Council funds. We will procure the implementation of the Landscape Management Plan within 5 years of the adoption of this Plan.***

##### **3.2.2 Reasons:**

3.2.2.1 To comply with Historic England's advice (see 1.2.1 above). As it stands, the proposal to "support development" appears to create a policy to support a strategic priority for development, and thus implement section 19 (1B) and (1C) Planning and Compulsory Purchase Act 2004. Site Allocation Wi3 sought to do this and has been rejected: concern over development was the primary reason for removing the golf course from Wi3. Now Policy N8.1 appears to do it instead. It is not acceptable.

3.2.2.2 This will also require the insertion of D12.5(g) as proposed at paragraph 1.2 above.



### **3.3 N8.1 paragraphs (a) – (j)**

#### **3.3.1 Change requested:**

Delete paragraphs (c) and (g). Re-order the remaining lettered paragraphs in the sequence of the Supporting Text so that they can be followed logically.

#### **3.3.2 Reasons:**

3.3.2.1 The retained paragraphs relate to the Historic England “at Risk” reasons or could be consistent with any landscape management plan for Wimbledon Park. However, (c) and (g) go far wider and deeper than is required to counter the four reasons for Historic England “at Risk”, currently set out in N8.1.12.<sup>9</sup> These two paragraphs (c) and (g) were introduced in the MM by the words “supporting development proposals that”. This is the promotion of development, not the careful curation of a sensitive, at-risk site. Merton’s “support” for development is not appropriate in N8.1 since this must replace a development Site Allocation. The former golf course is only one part of Wimbledon Park, the subject of a highly contentious application and these two paragraphs repeat, and favour, elements of the existing AELTC proposal 21/P2900, which is not appropriate.

3.3.2.2 A Landscape Management Plan will need to include more than the paragraphs that remain, and this Policy already risks becoming too long. Merton may care to consider just how much detail is necessary in this Policy, lest it overwhelms the entire Plan.

### **3.4 N8.1 Paragraph 8.1.3**

#### **3.4.1 Change requested:**

After “... is currently publicly accessible” insert:

***The golf course land is held by AELTC on a separate lease which entitles residents of Merton to play at reduced green fees without requiring membership. The AELTC have now closed the golf course.***

#### **3.4.2 Reason:**

Merton required public access “pay and play” rights when it granted the lease to the golf club company in 1986 in the face of a public outcry against renewal of a lease which contained no such rights and even included the public lake.<sup>10</sup> No doubt Merton were aware

---

<sup>9</sup> 8.1.12: “In 2016 the Wimbledon Park Registered Park and Garden was added to Historic England’s Heritage at Risk Register due to the following issues:

- Uncertainty around the future [of the entire historic landscape].
- The impacts of divided ownership on landscape management.
- Obscured views.
- The deterioration of the Lake.”

<sup>10</sup> Merton Recreation and Arts Committee, minute 442, 28 November 1984; Wimbledon News 28 March, 11 April, 18 April, 2 May 1986.





of their obligations as trustees of the public trust under which they held the freehold of the golf course, park, and lake (see section 6 below). The AELTC bought the golf course company in 2018 but kept the 1986 lease alive. That lease continues until 2041, beyond the life of this Plan.

### **3.5 N8.1 Paragraph 8.1.3**

#### **3.5.1 Change requested:**

Delete:

***The All England Lawn Tennis Club’s main grounds lies [sic] to the west of Wimbledon Park across Church Road and a commercial arrangement with the other owners to provide land for car parking, overnight camping, the Queue and concessions in the whole park has been used for many years to support the successful functioning of the Wimbledon Tennis Championships each summer. Planning application 21/P2900 has been submitted to Merton and Wandsworth Councils relating to the former golf course within Wimbledon Park.***

#### **3.5.2 Reasons**

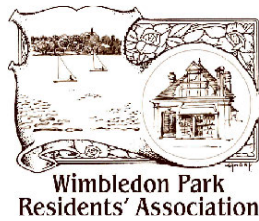
3.5.2.1 N8.1.3 deals with land ownerships. The words which we suggest should be deleted add nothing but favour the AELTC to the exclusion of any other interest and contradict the expressed purpose of N8.1.

3.5.2.2 The ownership and use of neighbouring land is irrelevant, just as it would be irrelevant to refer here to St Mary’s Church as a nearby listed religious building.

3.5.2.3 There has been a commercial arrangement between Merton and AELTC, which may well change, to use not the “*whole park*”, but *most of the public park* to support the championships.

3.5.2.4 The subjective comment “successful functioning of the Championships” is inappropriate. Many would challenge this and prefer that the public park should not be used for these purposes now that the AELTC own the heritage golf course, so that the public can continue to enjoy their entire park throughout the whole year.

3.5.2.5 Reference to a specific planning application is inappropriate, for the many reasons already discussed before the Inspectors, and should be deleted. This Plan is to last 15 years and should not be seen to favour any particular application. While Merton Planning Committee passed the application by a majority 6:4, Wandsworth refused it unanimously 7:0, especially because it failed to satisfy the stringent tests for development of Metropolitan Open Land. It is now before the GLA. Its fate is far from certain.



### 3.6 N8.1 Paragraph 8.1.3

#### 3.6.1 Change requested:

Insert at the end:

***Merton holds its part of Wimbledon Park as public open space as trustee under the statutory trust of s164 Public Health Act 1875. The sale of the golf course to the AELTC in 1993 has been disputed and the AELTC may be found to hold it on a similar trust. On their purchase in 1993 the AELTC covenanted with Merton as owner of the public park not to develop the golf course and to use it for restricted sporting purposes. Dealings with the statutory trust landholdings of both parties and by Merton with the benefit of the covenants are restricted by the Local Government Act 1972 (as amended).***

#### 3.6.2 Reasons:

3.6.2.1 The Wimbledon Park Estate (except The Wimbledon Club) was transferred from the Wimbledon Corporation to Merton by The London Authorities (Property Etc.) Order 1964 (SI No 1464) and appropriated to the s164 PHA Trust by The London Government Order 1965 (SI No 654). Since 1965 it has been held by Merton on the statutory public trust.

3.6.2.2 If the supporting text of the Policy is to personalise the landholdings, it should explain constraints as severe as the restrictions imposed by the statutory trusts and the 1993 covenants. Merton and AELTC have now been made aware of these issues. There is no dispute about the status of Merton's holding of the public park, and it is desirable to ensure that the corporate memory of Merton and the public retain knowledge of that status.<sup>11</sup>

3.6.2.3 For more detail about the 1993 Covenants and the Public Trust, please see section 6 below.

### 3.7 N8.1 Paragraph 8.1.4

#### 3.7.1 Change requested:

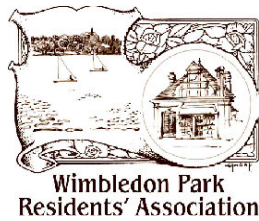
Insert at the end:

***It should be noted that the tests for approving development of MOL under the NPPF are even more stringent than those applied to Heritage Assets. "Inappropriate development is, by definition, harmful ... Substantial weight must be given to any harm ... potential harm must be clearly outweighed ..."***<sup>12</sup>

---

<sup>11</sup> From the unanimous judgment of the Supreme Court in *Day v Shropshire* 2023 UKSC 8, <https://www.supremecourt.uk/cases/uksc-2021-0031.html> at para 118: "If, as a result of this appeal, other local authorities decide to follow that advice and take stock of how they acquired and now hold the pleasure grounds, public walks and open spaces that they make available to the public to enjoy then that, in my judgment, would be all to the good."

<sup>12</sup> NPPF 152 and 153.



### 3.7.2 Reason:

For balance. Applications to develop Metropolitan Open Land must clear a hurdle even higher than that for heritage assets.

### 3.8 N8.1 Sports, recreation, and play Paragraph 8.1.7

#### 3.8.1 Change requested:

Delete the sentence comprising:

***“NPPF paragraph 98 states ... climate change.”***

Insert in its place:

***Merton Council will safeguard the open space and uses of the Wimbledon Park Estate in accordance with NPPF Chapter 8 Promoting healthy and safe communities, paragraphs 96 to 107. Merton Council hereby designates that part of Wimbledon Park which is in Merton as a Local Green Space and will urge Wandsworth Council to designate that part in Wandsworth also as Local Green Space. Merton Council will also require and enforce Community Use Agreements in accordance with 14.3.44 and 14.3.45 of this Plan.***

#### 3.8.2 Reasons:

3.8.2.1 The Plan already deals with sports generally in Chapter 14, Infrastructure, which applies to facilities required for people in the Borough. Through this Policy Merton wish to single out Wimbledon Park, to “recognise and support its sporting, recreation, ecological and amenity functions”. It would therefore be most appropriate and meaningful to attribute a further designation, and the criteria for Local Green Space fit perfectly.<sup>13</sup>

3.8.2.2 Sports use will not itself mitigate the problems of Heritage at Risk, the primary justification for N8.1. It is simply incidental to and descriptive of the current use of Wimbledon Park, and to save the heritage asset it must also comply with other planning policy restrictions.

3.8.2.3 For more detail about this reason, please see section 4 below.

### 3.9 N8.1 Paragraph 8.1.8

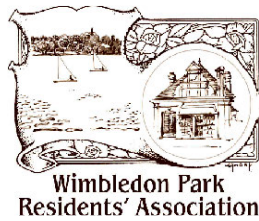
#### 3.9.1 Change requested:

Insert at the end:

***In 1986 Merton Council renewed the lease of the golf course on terms that 75% of membership should comprise residents of Merton and that any residents could play golf at***

---

<sup>13</sup> NPPF 105-107. See also The Open Spaces Society: <https://www.oss.org.uk/need-to-know-more/information-hub/local-green-space-designation/#criteria>



***substantially reduced green fees without becoming members. This public access continued when Merton sold the freehold reversion to the lease to the AELTC in 1993. The AELTC bought the golf club company in 2018 but have since denied public access. Merton will take steps to reinstate access for the public to the whole of the golf course.***

### 3.9.2 Reason:

The golf course is 40% of Wimbledon Park, and a critical part of the sports facilities available. Since its closure in 2022, public access has been prevented and should be reinstated throughout, whether for golf or an alternative public sport.

### 3.10 N8.1 Paragraph 8.1.11

#### 3.10.1 Change requested:

Insert at the end:

***Wimbledon Park is just one of many sites in Merton currently (2024) on the Historic England “Heritage at Risk” database. We will monitor this database regularly and ensure that any changes that may affect Wimbledon Park are considered in the context of the Landscape Management Plan anticipated by this Policy. When Wimbledon Park leaves the “At Risk” database, this Policy will cease.***

#### 3.10.2 Reason:

The database will constantly change. The purpose of this Policy is to resolve the current status of Wimbledon Park. Is there any reason to continue it when that purpose is satisfied?

### 3.11 N8.1 Addressing the future of the historic landscape and landscape management Paragraph 8.1.17

#### 3.11.1 Change requested:

Insert at the end:

***Whether or not suitable development proposals come forward, we will complete the Landscape Management Plan for Wimbledon Park within 1 year of the adoption of this Plan with the agreement of London Borough of Wandsworth, all landholders, Ward Councillors, community groups, Civic Societies and Residents' Associations neighbouring, or having an interest in the use of, the Estate. The plan will address the “at Risk” concerns and be paid for out of Merton Council funds. We will procure the implementation of the Landscape Management Plan within 5 years of the adoption of this Plan.***

#### 3.12.2 Reasons:

3.12.1 To meet the requirements of the Policy as amended. For further details please see section 5 below.



3.12.2 According to Merton's Planning Officer's report to committee on 21/P2900, the AELTC's s106 proposals include a landscape management plan. This Policy should not be contingent on that application. If a Landscape Management Plan is contingent on any development proposals, it may never happen. If the Heritage at Risk problem is so important, its resolution should not be treated as a sweetener or bargaining chip in any particular application.

3.12.3 The whole community is concerned about the future of Wimbledon Park and regard it as a public asset. Merton is trustee for the community and this amendment seeks to ensure that Merton complies with its obligations as trustee.

### **3.13 N8.1 Addressing obscured views Paragraphs 8.1.22 and 8.1.23**

#### **3.13.1 Changes requested:**

***Delete from 8.1.22 (a): "and on the former golf course".***

***Delete the whole of 8.1.23 (a).***

#### **3.13.2 Reason:**

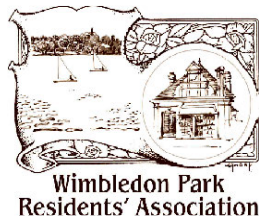
Removal of the golf course planting is a specific requirement of the AELTC application 21/P2900 to make space for their comprehensive development. It is not justified for any other purpose and would cause harm to protected wildlife and the loss of carbon captured. It should not be part of this policy, but considered, if at all, in the context of any specific planning application and an overall landscape management plan.

### **3.14 N8.1 Addressing the deterioration of the Lake Paragraph 8.1.29**

#### **3.14.1 Change requested:**

Insert at the end:

***The process of desilting of the lake needs further justification and research in view of the harm which it will cause. We will commission further reports to update that already obtained by us from Salix Ecology in 2018 (<https://www.merton.gov.uk/system/files?file=preliminary20ecological20appraisal.pdf>) and take further advice before considering any measures to deal with silt in the lake. We will not proceed with any de-silting without ensuring on the best advice available that it is necessary and if so, that it is undertaken in the least harmful way possible. If there is any doubt about this advice, we will take no action to de-silt the lake. In any event we will require that silt traps are installed on the drains and tributaries feeding the lake to prevent any further silting.***



### 3.14.2 Reasons:

3.14.2.1 The Salix report commissioned by Merton in 2018 has not been disclosed. Merton will be aware that it cast considerable doubt on the need for and method of achieving de-silting and recommended further investigations.

3.14.2.2 A long time has passed since the 2014 inspection report mentioned in N8.1.29, and much work has since been undertaken. This needs to be evaluated and assessed in the light of the latest data and technical knowledge before potentially great harm is done to the environment.

3.14.2.3 To ensure that harmful interventions are not made unless clearly necessary.

3.14.2.4 To ensure that adjoining landowners recognise their responsibility to mitigate any problems of silting.

### 3.15 N8.1 Addressing the deterioration of the lake Paragraph 8.1.30

#### 3.15.1 Change requested:

Insert at the end:

***We will ensure that within 5 years of the adoption of this Plan the public will enjoy dedicated perpetual rights of access on a hard-surfaced walk and cycleway at least 3 metres wide on land around the lake at a distance from the edge sufficient to protect wildlife in the lake. These rights will be exercisable at all times when the public park is open and will be under the control of no person except Merton Council as trustee of the public park. We will acquire any rights over the land of others needed to implement this commitment, for which we will make the necessary resources available.***

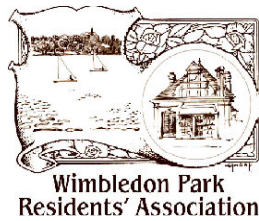
#### 3.15.2 Reasons:

3.15.1 The 1993 covenants included an obligation on AELTC to *dedicate a walkway around the lake*. We are glad to see a nod in the direction of this covenant at N8.1.d. “Improve public access *around the whole lake*”. However, N8.1.30 as it stands is weak and will not achieve the objective.

3.15.2 Merton have long held the ambition to create such a walkway. It was the first requirement of their committees when contemplating the freehold sale in March 1993.<sup>14</sup> A dedicated route around the lake was promised by the AELTC in the 1993 covenants “as soon as golf ceases”. Golf ceased in December 2022, but the AELTC are resting on the specious argument that the lease, which they also own but have not yet merged with the freehold, must come to an end before the obligation arises.

---

<sup>14</sup> Leisure Services Committee 31 March 1993 and Administration and Land Sub-committee 6 April 1993.



3.15.3 The “dedication” expected by the 1993 covenant and repeated here has a technical meaning that it will be permanently available to the public like a public footpath or highway. The current AELTC proposal is that the walkway they offer will be “permissive” only, and under their control.

#### **4 Sport and Recreation: further Comments**

4.1 These topics are already dealt with under Chapter 14, Infrastructure, a general heading for facilities required for people in the Borough. Instead of opening with a cross-reference to that policy, N8.1 mentions only NPPF 98 (now 102) but no more: it fails to mention NPPF 107.<sup>15</sup>

4.2 N8.1 is not appropriate because it singles out one site in a disproportionate way, but then so does part of Chapter 14. Is it intended that N8.1 should prevail over the provisions of Chapter 14, Infrastructure, where Merton promotes policies for sport and recreation:

“Policy IN14.3 Sport and Recreation: We are committed to helping our residents lead healthy and active lifestyles and improve mental well-being, through sport and recreation. We will:”

or is it intended that Chapter 14 should prevail over N8.1, suggested by:

“IN14.3e. Recognise the All England Lawn Tennis Club as being an internationally significant sporting venue.”

4.3 Much is made of the AELTC tennis complex as a jewel in Merton’s crown, which no-one denies. But that complex is for entertainment, charging visitors to watch professionals, which brings economic benefits to Merton. It does not satisfy the requirements of the London Plan 8.3.1 and does not provide sports or recreation facilities for the people of Merton.

**4.4 This confusion must be resolved. We appreciate that at this very late stage we must deal only with recent Main Modifications, but as it stands the Plan is unsound. The retention of N8.1 must require the modification of Chapter 14. Even if N8.1 goes, which we would prefer, we respectfully submit that N8.1 shows why Chapter 14 is the wrong place to promote the AELTC tennis complex. It sits naturally in Chapter 13 (“Economy and Town Centres”), at 13.8.18-21, currently headed “Protection of leisure and entertainment facilities”, which should then be headed “Protection and Promotion of leisure and entertainment facilities”.**

4.5 Either way, whether N8.1 remains or goes, the effect of the change in the Site Allocation Wi3 should be reflected in Chapter 14 where the emphasis must be on what the *existing*

---

<sup>15</sup> 107. “Policies for managing development within a Local Green Space should be consistent with those for Green Belts.”



complex (not the complex which might result from a contested and undecided planning application), and indeed all other stadia in the Borough, can deliver for the benefit of all people in the Borough, consistent with the purpose of Chapter 14.

4.6 The problem is that the current Chapter 14 goes on to develop the promotion of the AELTC including:

“14.3.39 Policy S5 of the London Plan recognises that specialist sporting venues and stadiums, such as the AELTC venue, have a vital role to play in enabling wider access to sport, as well as having an important cultural value.”

4.7 This is based on an incorrect premise: the London Plan’s concept of sport and recreation is not public entertainment but participatory sport and recreation. Without actual public activity on their sites, specialist stadia cannot “widen access”. For example (London Plan, Pages 230-1):

“5.5.1 Sport and recreation facilities are important components of social infrastructure. Both formal and informal facilities should be provided, to encourage physical activity and deliver a range of social, health and wellbeing benefits to communities.

5.5.5 Specialist sporting venues and stadiums also have a role to play in providing facilities and enabling wider access to sport, as well as having an important cultural value.”

4.8 This acknowledges specialist venues and stadia, but also requires that they must provide facilities for public use and wider access. **It would be more accurate to rephrase 14.3.39 as follows:**

**“14.3.39 Pursuant to policy S5 of the London Plan, specialist sporting venues and stadiums will be required to play a role in providing facilities to enable wider access to sport.”**

4.9 If N8.1 had been raised at an earlier stage in the Local Plan process, such that this confusion over sporting facilities in the Borough could have been resolved more broadly, we would have pressed for more detail about what this “role” entails. At the minimum, faced with the disproportionality of N8.1, this is the least that could be done.

## **5 Can a Landscape Management Plan be effective?**

5.1 At the heart of the Historic England concerns is “The impacts of divided ownership on landscape management”. N8.1 suggests that the solution is to “... support development proposals that ... b. Prepare a landscape management plan, in collaboration with all landowners, to coordinate the long-term management and maintenance of Wimbledon Park”.





5.2 As mentioned at 1.2.2.2 above, the MM is not saying that a development proposal *must* include anything, not even the preparation of a landscape management plan, simply that a development proposal which includes it will be supported.

5.3 Part of the Registered Park and Garden is within the London Borough of Wandsworth. A Statement of Common Ground between Merton and Wandsworth refers to the AELTC planning application and is based on the Stage 2A Site Allocation Wi3.<sup>16</sup> Merton have not, apparently, consulted with Wandsworth on the Modifications now under consideration, but rely on the SCG paragraph 5.52:

“Whilst there are a number of shared assets of heritage and conservation importance between Merton and Wandsworth (see section 4 above and section 5 reference to the AELTC planning application at Wimbledon Park), this has not been identified as a strategic or cross-boundary issue.”

5.4 A lot has happened since January 2022 when that SCG was signed. The future of the Wimbledon Park Estate is clearly strategic and has become a cross-boundary issue. Wandsworth refused the AELTC planning application in November 2023 especially on the ground that no “very special circumstances” exist to allow development of this Metropolitan Open Land. While the Registered Park is in both Boroughs, Merton’s Local Plan cannot apply to the section in Wandsworth. Not only is there divided ownership, but also divided jurisdiction, and a divided approach to development decisions. Merton’s Local Plan cannot resolve the at-risk issues alone. **There appears to have been no effort since January 2022 to involve Wandsworth, and without their involvement, the MM is unfortunately unsound.**

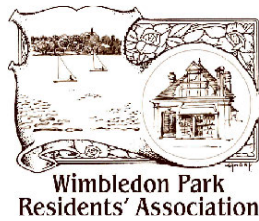
5.5 Owners of land not part of any development proposal would be under no compulsion to assist another’s application. This was raised, and we thought dealt with at the Inspectors’ Hearings. Merton have confirmed that no other parties have been involved in the preparation of N8.1, so nobody knows if the other landowners would make a legal commitment at this stage.<sup>17</sup> There is no legal process by which all three landowners could be so compelled. Unless Merton can demonstrate that all landowners have legally committed to it now, the promise is illusory. It must be for Merton to take the initiative to resolve this problem.

5.6 A “Memorandum of Understanding” about Wimbledon Park has existed between the three landowners for several years, but no action at all has been taken. In any event, during the 15-year life of this Local Plan, circumstances may change, and, as lack of progress on even the MOU illustrates, no landowner would be interested in tying its hands for so long. Merton should also be aware of, but the MM does not mention, its own initiative which

---

<sup>16</sup> SCG Merton and Wandsworth 25 January 2022 paragraphs 4.36, 4.37, 4.39, 4.40, 5.48, 5.49, 5.52.

<sup>17</sup> Email Butler to Coombe 20 February 2024.



appears to have come to nothing. Merton themselves commissioned a masterplan for the park and lake in 2018, costed at about £20m.<sup>18</sup> This does not appear to have been pursued.

5.7 There remains a deep feeling of frustration and sadness among the local community that the three landowners are not able to come together, but instead that one pursues its own ends. Unfortunately, without a pre-existing commitment, this policy would not appear to be the appropriate means to bring all interested parties together; it is unsound and would be ineffective. This Association would welcome an active and purposeful dialogue.

5.8 The topic of a combined management plan was raised at the Hearings. There has been no discussion about it in the intervening 18 months, during which a consensual Modification could have been discussed. It appears again now but still fails to address the key concerns then raised.

## **6 The 1993 Covenants and the Public Trust**

### **6.1 The 1993 Covenants.**

6.1.1 We explained in previous submissions on this Plan 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, and those covenants prevent development and restrict use. Those covenants 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 the creation of this Plan.<sup>19</sup>

6.1.2 The argument was based on the Holocaust Memorial case and discussed at the Inspectors' Hearings in 2022 when Merton and the AELTC tried to argue that the 1993 covenants were irrelevant or could be set aside. Since then, the Court of Appeal has refused the Government leave to appeal the first instance decision in the Holocaust Memorial case.<sup>20</sup> The Government has announced that it would be pursuing primary legislation, a clear admission that the restriction on development of the land in question was a material consideration.<sup>21</sup>

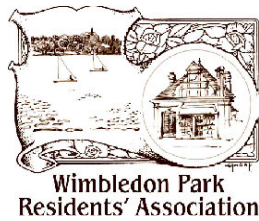
---

<sup>18</sup> [https://www.merton.gov.uk/system/files?file=4872\\_wimbledon\\_report\\_20dec18.pdf](https://www.merton.gov.uk/system/files?file=4872_wimbledon_report_20dec18.pdf)

<sup>19</sup> WPRA submission 18 May 2022.

<sup>20</sup> 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".

<sup>21</sup> <https://www.gov.uk/government/publications/dluhc-accounting-officer-assessments/uk-holocaust-memorial-and-learning-centre-revised-accounting-officer-assessment>



6.1.3 Immediately after their planning committee passed that application, the leader of Merton Council wrote to AELTC to remind them of the 1993 covenants and ask how they will be satisfied. We gather that no substantive answer was received.<sup>22</sup>

6.1.4 In view of these more recent developments, we maintain our legal position that the 1993 covenants are material considerations in the deliverability of the Plan relating to Wimbledon Park. There are two reasons: the AELTC golf course land is bound by the 1993 covenants, and the benefit of the covenants is vested in Merton as trustee for the public of the park and lake.

## **6.2 The Public Trust of Wimbledon Park**

6.2.1 The public trust under which the Park is held has a significant bearing on the ownerships of both Merton and the AELTC and the Plan would be incomplete without an acknowledgement of that fact. Since the Inspectors' Hearings closed, the unanimous Supreme Court decision in *Day v Shropshire* (2023) has clarified the law about local authority powers over public trust land.

6.2.2 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.

6.2.3 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.<sup>23</sup> 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.

6.2.4 This is a technical topic, and if the Inspectors require, we should be happy to advance further legal arguments in support of it. Merton and the AELTC are aware of the arguments which have been discussed in submissions from this Association, the Wimbledon Society and the AELTC in relation to planning application 21/P2900, including Opinions of various Leading Counsel.

6.2.5 The effect of this public trust issue is twofold. First, and this is not disputed by Merton or the AELTC, Merton hold the park and lake on trust for the public. Their powers to deal

---

<sup>22</sup> Letter Merton to AELTC 27 October 2023 <https://news.merton.gov.uk/2023/10/27/council-leader-seeks-clarity-from-all-england-club-on-how-it-intends-to-adhere-to-covenants-on-wimbledon-park-golf-course/>

<sup>23</sup> The Wimbledon Corporation Act 1914



with land are severely limited by the Local Government Act 1972 as amended. This should be acknowledged if N8.1 is to remain. Day v Shropshire 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 material. The trustee duties include the enforcement of the 1993 covenants.

6.2.6 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.

.....