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Our ref JESV/CAP/122198.00074

11 December 2024

Dear Save Wimbledon Park Ltd

Letter of Claim in accordance with the Practice Direction - Pre-Action Conduct and Protocols (the “PDPAC”)

Grant of Planning Permission subject to Planning Condition and Section 106 Agreement dated 15 November 2024 at Wimbledon Park Golf Course, Home Park Road, Wimbledon Park, London SW19 7HR; GLA reference GLA/2024/0045/S3; LB Merton reference 21/P2900; GLA reference GLA/2024/0047/S3; LB Wandsworth reference 2021/3609 (the "Planning Decisions")

Proposed Claim for declarations as to the status of the Property (the “Proposed Claim”)

1. INTRODUCTORY

- 1.1 We act on behalf of The All England Lawn Tennis Ground PLC (“AELTC”).
- 1.2 The Planning Decisions (referred to in the subject of this letter) granted on 18 November 2024, permit (from a planning perspective) AELTC’s proposed expansion of facilities for the Wimbledon Tennis Championships (“**The Championships**”) on the land that was formerly the Wimbledon Park Golf Club (“**the Property**”) by constructing 38 new grass tennis Courts, a show Court, and associated facilities for players and maintenance (“**the Project**”). The Project also involves the provision of an 11-hectare park which would be open to the public outside of The Championships period.

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- 1.3 AELTC is aware that a number of those who objected to the Planning Decisions have asserted that s. 164 of the Public Health Act 1875 (“**s. 164**”) applies to the Property, with the consequence that the Project cannot be constructed consistently with s. 164.
- 1.4 Our client does not agree with that interpretation of the position. Given the need for certainty and, for the reasons explained in this letter, it intends to request that the Court determine whether the Property is subject to s. 164.
- 1.5 To bring those proceedings there are certain procedural steps that AELTC must follow, including sending this letter to you in accordance with the PDPAC, prior to issue. In sending this letter, we are obliged to refer you to the Court’s powers to impose sanctions for failure to comply with the provisions of the PDPAC.

2. **BACKGROUND**

- 2.1 The majority of the Property is within the London Borough of Merton (“**Merton**”). Merton was previously the freehold owner of the Property. It is also the freehold owner of adjoining land known as Wimbledon Park (“**the Park**”), registered at HM Land Registry under title numbers TGL95509 and 215592.
- 2.2 AELTC does not dispute that the Park is held subject to s.164. The Park has, from the 1920s, been laid out as a public park and open to the public as a matter of right. As explained below, the same is not true for the Property.
- 2.3 The Park and the Property were, together with other land, previously part of the Wimbledon Park Estate (“**the Estate**”). Parts of the Estate were let for use as a golf course by Wimbledon Park Golf Club on 31 December 1900. By a lease dated 15 September 1911, that club took a lease of the Property for a term of ten years. By this date, a golf course had been laid out on the Property.
- 2.4 As a result of the Wimbledon Corporation Act 1914 (“**WCA 1914**”), the Mayor Aldermen and Burgesses of the Borough of Wimbledon (“**the Corporation**”) were (among other matters) empowered to purchase and hold the Estate. So far as is material to the Proposed Claim, the provisions made by WCA 1914 included the following:
 - 2.4.1 By s.5 the Corporation was empowered to purchase the Estate by agreement, subject to existing tenancies, and to hold, use, manage, control and dispose of the Estate for the purposes of and subject to and in accordance with the powers and provisions set forth in the act.
 - 2.4.2 By s.7(2), the Corporation was empowered to let for a term not exceeding 21 years any part or parts of the Estate.
 - 2.4.3 By s.8, the Corporation was empowered to hold use and appropriate for the purposes of a municipal golf course such part of the Estate as may be necessary or expedient for that purpose.
 - 2.4.4 By s.10, the Corporation was required from and after the expiration of a period of 5 years to appropriate and maintain not less than 20 acres of the Estate for the purpose of a public walk, pleasure ground, public park or recreation ground.

- 2.4.5 By s.11, it was provided that from and after the date when the Corporation had thus appropriated land, the provisions of the Public Health Acts would apply to the land thus appropriated as if it had been acquired pursuant to s.164
- 2.5 The Corporation purchased the Estate using the above powers in 1914.
- 2.6 The time by which appropriation under s.10 had to occur was subsequently extended to 31 December 1927. During the 1920s, the Corporation laid out the Park as a public park and appropriated it under WCA 1914 s.10. Accordingly, pursuant to s.11 the provisions of the Public Health Acts thereafter applied to the Park as if it had been acquired pursuant to s.164.
- 2.7 The Property was never appropriated under s.10, and at no stage did s.11 apply to the Property. Furthermore, it is a point of fact that at no time was the Property laid out as a public park or made available for public recreation.
- 2.8 Rather, the Corporation exercised its powers of letting, pursuant to s. 7(2), so that the Property was at all material times used and possessed exclusively by a tenant for the purposes of a private golf club. In particular, a series of leases was granted by the Corporation to a golf club, under which that golf club enjoyed exclusive possession of the Property.
- 2.9 Those leases are as follows:
- 2.9.1 On 2 July 1919, the Corporation granted a lease to the golf club pursuant to its powers under WCA 1914 s.7(2).
- 2.9.2 On 15 June 1925, the Corporation granted a lease to the golf club for a term of 21 years, pursuant to its powers under WCA 1914 s.7(2).
- 2.9.3 By an agreement dated 29 June 1934 (among other things) the Corporation agreed to advance to the golf club a sum of £10,000 as a contribution to the construction of a new clubhouse, and on completion of that construction, to grant the club a new lease.
- 2.9.4 On 24 June 1935, the Corporation granted a lease to the golf club for a term of 30 years, pursuant to the 1934 agreement and its power under the Local Government Act 1933 s.164.
- 2.9.5 On 10 April 1961, the Corporation granted a lease to the Wimbledon Park Golf Club Ltd for a term of 38 years and 3 months from 1 October 1960 (“the 1961 Lease”), pursuant to its power under Local Government Act 1933 s.164.
- 2.10 The only alternative explanation for how the Property has been held, if not as above, is that it was appropriated pursuant to s.8 for the purposes of a municipal golf course, and thereafter held pursuant to s.8 (this may be inferred from recital 2 of an agreement for lease of the Property dated 29 June 1934 which refers to the power under s.8). That alternative does not result in s. 164 applying to the Property.
- 2.11 Pursuant to the London Government Act 1963, the Corporation ceased to exist and its functions were, so far as relevant, transferred to Merton. By s.84 of the London Government Act 1963, the Minister was empowered to make by order provision with respect to the transfer of real property vesting in the former authorities, including the Corporation.

- 2.12 Such provision was made in the London Authorities (Property etc.) Order 1964/1464 (“**the 1964 Order**”). The 1964 Order was amended by the London Government Order 1965/532. The effect of the 1964 Order, as amended, was as follows:
- 2.12.1 By Article 16 and Schedule 4, all property belonging to the Corporation was transferred to Merton. Merton therefore became the proprietor of the freehold reversion of the Property, and of the Park.
 - 2.12.2 By Article 16(2), Merton took the Property subject to the 1961 Lease. At the time the 1964 Order came into effect (31 March 1965), the 1961 Lease had 33 years and 9 months to run. It granted the Wimbledon Park Golf Club Ltd exclusive possession of the Property. The public had no right of access to the Property.
 - 2.12.3 By Article 32 and Schedule 5, it was provided that the land identified in column 1 (described as land held for the purpose of WCA 1914 s.5) was thereafter held for the purposes of s.164.
- 2.13 By the Local Law (South West London Boroughs) Order 1965, WCA 1914 was repealed subject to certain exceptions. In particular:
- 2.13.1 WCA 1914 s. 11 (by which the provisions of the Public Health Acts would apply to the land appropriated under s.10 as if it had been acquired pursuant to s.164) was repealed; but
 - 2.13.2 WCA 1914 s.8 was not repealed, but instead applied to Merton.
- 2.14 It is our client’s position that the true construction and effect of the above statutory scheme (so far as material) was that from 31 March 1965:
- 2.14.1 The Park was vested in Merton for the purposes of s.164 (as it has previously been deemed to be held by the Corporation).
 - 2.14.2 The Property was vested in Merton as it had previously been held by the Corporation subject (i) to the 1961 Lease (ii) the powers of leasing contained in Local Government Act 1933 s.164 and (iii) WCA 1914 s.8.
 - 2.14.3 The land identified in Article 32 of Schedule 5 to the 1965 Order consisted of the Park, to which s.164 had previously been deemed to apply, and to which s.164 thereafter applied. It did not include the Property, to which s.164 had not previously been deemed to apply and which had never been used for public walks or pleasure grounds.
- 2.15 Therefore, the statutory scheme preserved the way in which both the Property and the Park had been held prior to its enactment.
- 2.16 By a lease dated 8 May 1986 (“**the 1986 Lease**”), Merton again demised the Property to the Wimbledon Park Golf Club Ltd for a term of 55 years. Merton had power so to do under the Local Government Act 1972 s.123 (which replaced the Local Government Act 1933 s.164).
- 2.17 By a transfer dated 23 December 1993 (“**the Transfer**”), Merton conveyed the freehold reversion to the Property to AELTC. Merton had power so to do under the Local Government Act 1972 s.123.

2.18 By a transfer dated 31 July 2021. Wimbledon Park Golf Club Ltd transferred its leasehold interest under the 1986 Lease to AELTC, on terms that it would not merge with the reversion.

3. PROPOSED CLAIM

3.1 Our client’s position is as set out above and has been public since it was set out clearly in the Opinion of Jonathan Karas KC dated 23 June 2023. Since then, a number of further Opinions of Leading Counsel have been obtained by a number of other parties including, most recently, the Greater London Authority (“GLA”) who instructed Timothy Morshead KC to opine.

3.2 Mr Morshead KC states (in his Opinion dated 17 September 2024), that “*No number of barristers’ opinions can outweigh a decision of the Court. Barristers advise: only the Court decides*”.

3.3 Given the importance of this matter, as matters stand at present, it is clear to our client that for it to proceed with the Project with the certainty required, the Proposed Claim should be resolved by the Court.

3.4 In relation to the Proposed Claim, our client will seek a declaration in the following terms:

3.4.1 A declaration that on the true construction of the 1964 Order, Merton did not as a result thereof hold the Property for the purposes of s.164;

3.4.2 Alternatively, that if Merton did so hold the Property, such rights as the public acquired as a result thereof did not survive the sale of the freehold reversion, notwithstanding that the requirements for advertisement in s.123 of the Local Government Act 1972 were not met. Without prejudice to the generality of the foregoing, our client reserves its position to argue in the Supreme Court that R (on the application of Day) v Shropshire Council [2023] UKSC 8 should not be followed.

4. REPRESENTATION OF PARTIES OPPOSED TO THE PROJECT

4.1 There have been a number of parties opposed to the Project at varying times. In order to deal with the Proposed Claim in an efficient and proportionate manner, our client intends to issue a claim against only one or a small number of objectors. The declarations we seek will operate *in rem* so as to bind the world, but given the circumstances our client will also seek an order under CPR 19.8(1) and/or CPR 19.9(2) that the objector or objectors against whom it has claimed will be appointed as representative for all persons who would or may have rights over the Property in the event that s.164 applied to it.

4.2 You have been identified by our client as one of the parties who has asserted the existence of a statutory trust and who might be a potential defendant in this claim. Our client has sent letters in this form to:

4.2.1 Save Wimbledon Park Ltd

4.2.2 ‘Save Our Capability Brown Heritage Wimbledon Park’ Ltd

4.2.3 Friends of Wimbledon Park

4.2.4 The Capability Brown Society

- 4.2.5 Wimbledon Society
- 4.2.6 Wimbledon Park Residents Association
- 4.2.7 Merton
- 4.3 On receipt of the substantive response to this letter, our client will decide against whom to proceed and will give you notice at that point of its decision.

5. RELEVANT DOCUMENTS

- 5.1 The following documents are relevant to this claim:
 - 5.1.1 Stage 3 Decision Notice – London Borough of Merton
 - 5.1.2 Stage 3 Decision Notice – London Borough of Wandsworth
 - 5.1.3 Wimbledon Park Golf Course - GLA Stage 3 Report dated 27 September 2024;
 - 5.1.4 21P2900_Applicant response re. Day v Shropshire_Cover Letter and Legal Opinions_07.07.2023;
 - 5.1.5 21P2900_Applicant response re. Day v Shropshire_Supporting Bundle of Legislative Provisions_All Parts_07.07.2023;
 - 5.1.6 21P2900_Applicant response re. Day v Shropshire_Supporting Bundle of Relevant Factual Documents_All Parts_07.07.2023; and
- 5.2 You can access these documents via the link below. Please insert the password when prompted. This link will expire two weeks from the date of this letter. We recommend that you download the documents locally so that you are able to access them after this period.

Link: <https://transfer.cmck.com/public/folder/m-3717943emaqw0uweywp/Letter%20dated%2010%20December%202024%20-%20Enclosures>

Password: 2R5^^NFzyr

- 5.3 Please note, this is not an exhaustive list of the documents which are relevant to the claim.
- 5.4 Please confirm that you will take proper and appropriate steps to ensure that no relevant documents, including electronic documents, in your control, are altered, lost, destroyed or disposed of, pursuant to paragraph 7 of CPR Practice Direction 31B.
- 5.5 We can provide hard copies of these documents upon request and upon provision of an address to which they should be sent and subject to you being responsible for reasonable printing costs.

6. INDEPENDENT LEGAL ADVICE

- 6.1 We recommend that you seek independent legal advice in relation to this letter and the Proposed Claim. If you have already instructed solicitors in this matter, please provide us with their contact details so that we may provide them with a copy of this letter and correspond with them directly.

7. ALTERNATIVE DISPUTE RESOLUTION (“ADR”)

7.1 Our client considers that the Proposed Claim must be determined by the Court. However, our client may be willing to consider negotiations or some other form of ADR should you consider that this may assist.

8. NEXT STEPS

8.1 Please acknowledge receipt of this letter within the next 7 days.

8.2 Please also provide confirmation within 28 days regarding whether you:

8.2.1 support and agree with the declarations sought; and/or

8.2.2 are prepared to be co-claimant in seeking these declarations from the Court.

8.3 If you are going to respond to this letter, a reasonable time to respond (in accordance with the PDPAC) is 28 days from the date of this letter.

8.4 Our client intends to proceed with the Proposed Claim as set out above after 28 days from the date of this letter, or sooner if it deems it appropriate. This may be done without further reference to you.

8.5 Our client is also considering issuing an application to expedite the trial of the proceedings at or around the same time as issuing the claim. We will write to you in due course with further details in the event that our client concludes that it will issue such an application, but you should be aware that we will rely on the time afforded to you to date within the planning process and in order to respond to this letter as a reason why expedition would not prejudice your position.

8.6 In the meantime, our client’s position in relation to all matters connected with the Proposed Claim remains fully reserved.

Yours faithfully



CMS Cameron McKenna Nabarro Olswang LLP