

**Case Name:** *Save Wimbledon Park Ltd, R (on the application of) v Mayor of London* [2025] EWHC 1856 (Admin) (21 July 2025)

**Full case:** [Click here](#)

### **Commentary:**

This case concerned the proposed expansion of the site of the Wimbledon Championships onto Wimbledon Park Golf Course, Home Park Road, Wimbledon Park SW19 7HR ("**the Golf Course Land**"). If it proceeds, the development will involve developing 38 new tennis courts, tennis related infrastructure and new buildings including an 8,000 seat stadium, as well as extensive works to Wimbledon Park Lake. The development is highly controversial.

The All England Lawn Tennis Club submitted applications for planning permission to both Merton and Wandsworth as relevant planning authorities because the Golf Course Land lies within the administrative boundaries of each authority. Merton voted to approve the proposal but Wandsworth voted to refuse. In broad terms, the balance between the "harms" and the "benefits" of the development was differently struck by each of the authorities. The applications were called in for determination by the Mayor of London who granted permission for the development on 18 November 2024.

The Judicial Review was dismissed. The successful grounds concerned the extent to which deliverability of a development may be a consideration for the decision maker and the interpretation of NPPF paragraph 202 concerning deliberate neglect of or damage to heritage assets and paragraph 103 concerning sports and recreational provision.

### **Facts**

The Golf Course Land is subject to a number of designations within planning policy:

- Metropolitan Open Land ("**MOL**") and Open Space – as such, it has similar protection to Green Belt land.
- Registered Park and Garden ("**RPG**") of Special Historic Interest (Grade II\*) —it is part of the remains of a larger historic landscape designed by Lancelot "Capability" Brown. It is on Historic England's 'At Risk' Register.
- Nature Conservation – it is a Site of Importance for Nature Conservation and is also part of a defined Green Corridor.

- Trees on the land are protected under a Tree Preservation Order or a Conservation Area designation (being within the Wimbledon North Conservation Area).

There was a dispute between the parties about whether the Golf Course Land was held by Merton under a statutory trust requiring it to be kept available for public recreational use ("**Statutory Trust**"). It was common ground that the Golf Course Land is the subject of restrictive covenants which require it to be kept open and free of built development ("**Restrictive Covenants**").

The existence of each of these restraints or impediments on development are at the heart of Save Wimbledon Park Ltd's ("**SWP**") case that the Mayor acted unlawfully in granting the planning permissions.

## Grounds

SWP made three complaints about the legality of the Mayor's decision to grant the planning permissions:

- Ground 1: The Mayor failed to take into account, adequately or properly, a number of material considerations in respect of the Statutory Trust and Restrictive Covenants. In particular, SWP said that the planning "benefits" upon which the Mayor relied to satisfy the very special circumstances test, and thus to justify development on MOL, were predicated on the need for the proposal. However, according to SWP, the Mayor claimed to be determining the application on the basis that the Statutory Trust existed, and the effect of the Statutory Trust was to preclude the development and thus to preclude the meeting of that need. This was essentially a complaint about the "deliverability" of the proposal as a relevant consideration having been unlawfully excluded.
- Ground 2: The Mayor failed to consider whether the earlier land use management choices in the development site amounted to deliberate neglect, or damage to, a heritage asset contrary to the NPPF paragraph 202 (version of 20 December 2023 – the text of which has been superseded).
- Ground 3: The Mayor erred in his consideration of the NPPF paragraph 103 in respect of sports and recreational provision.

## Judgment

Mr Justice Saini dismissed the first ground, concluding that *"...it cannot be the case that the existence of an obstacle (even an insurmountable one) means that, in cases where*

*the proposal meets a need, deliverability is always material*". If a development is prevented from being implemented it will not deliver any benefits (whether meeting a need, or otherwise). However, there will also be no harm, there will be no development at all. As such, where there is a purported "*intractable*" obstacle to delivery it was found to be legitimate to determine whether the development would be acceptable in land use terms on the assumption that it will come forward at some point. Otherwise it would be impossible to reach a decision in any case where there is or is said to be an "*intractable*" obstacle.

Mr Justice Saini noted that there may be cases where a decision-maker could find deliverability relevant to the land use planning exercise as a matter of planning judgment. However, in this case, the decision-maker expressly turned its mind to such issues and concluded that the deliverability of the development did not affect the weight to be given to its benefits – and, in particular, that the weight to be given to the benefit of meeting a "need" was not affected by precisely when the development actually came forward. This was considered to be a lawful exercise of judgment.

In summary, the court held the Mayor's decision on the relevance of deliverability (applying to both the Statutory Trust and the Restrictive Covenants) was a planning judgment rationally exercised and having regard to appropriate and relevant factors. It was rational for the Mayor to find that deliverability of the development did not in the particular circumstances affect the merits of granting planning permission, so the means for overcoming potential obstacles in the way of development did not fall for consideration.

In relation to the second ground, which was also dismissed, Mr Justice Saini concluded that SWP's suggestion that the Mayor failed to have regard to paragraph 202 of the NPPF was "*plainly wrong*" for the following reasons:

- Paragraph 202 relates to deliberate neglect or damage to heritage assets, and "*deliberate*" action requires intent.
- The underlying purpose of the policy (as identified in the PPG) is to prevent an applicant for planning permission seeking to improve their prospects of gaining planning permission, and that purpose is not engaged on the facts of this case where all that has happened is that a lawful use has been maintained.
- "*Deliberate*" equates to a conscious decision to act in a certain way. Mr Justice Saini found that the "*erosion*" of the RPG's features "*had been caused by planting which facilitated the lawful use of the land, not in order to cause it damage*".

Finally, in dismissing the third ground, Mr Justice Saini said that SWP's claim that the Mayor gave no consideration of the quantitative loss of open space and/or sports and recreational provision was *"unfounded"*, and *"the amount of provision of open space was plainly understood and taken into account"*.

## **Conclusion**

For these reasons, SWP's claim was dismissed.

*Case summary prepared by Nikita Sellers & Ruben Sosa Sepa*