

ERUV APPEALS - ERIC FIBBENS' COMMENTS ON EVIDENCE BY LOCAL PLANNING AUTHORITY

1. COUNCILLOR MRS SHEILA SCOTT

1.1. Mrs. Scott provides the Council's primary evidence. In paragraph 2.4 she lists what the Council regard as the material planning considerations quoting:-

- The Local [visual] environment including trees;
- The visual amenities of the occupiers of residential and other premises; and
- The free flow of traffic and public safety.

1.2 In paragraph 2.10 Mrs. Scott specifically acknowledges that the Council formed no opinion on the subject of need and offers no evidence on that subject.

1.3 Nowhere in her evidence does Mrs. Scott refer to the Council's Community Services Chapter 5 of the Unitary Development Plan (UDP) nor does she anywhere refer to the positive text and policies contained in that chapter relating to Ethnic, Religious and Voluntary Groups.

1.4 Nowhere does Mrs. Scott provide any evidence in respect of highway, traffic or safety objections and she therefore concentrates on matters of the local visual environment, trees, and the visual amenity of adjoining residents.

2. THREE SITES CONCEDED

2.1 During the course of her specific site appraisals Mrs. Scott acknowledges that there can be no reasonable objection on visual or other amenity grounds in respect of sites Nos. 07, 30 and 37.

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2.2 Since it would appear that the Council are offering no evidence in respect of those three sites it seems to me that it could be agreed between the primary parties at the outset of the Inquiry that the appellants are entitled to their planning permission at least insofar as those three sites are concerned.

3. TREES

3.1 In respect of a number of sites both Mrs Scott and her colleague Councillor Davis allege that poles will be sited close to or even within the spread of the crown of a number of trees. They suggest that this fact will cause damage to such trees sufficient to justify the refusal of planning permission.

3.2 I have taken specific advice on this subject from Mr. Christopher Burnett of Chris Burnett Associates Landscape Architects from whom I have regularly received advice concerning matters of landscape and trees for the past decade. Mr. Burnett was originally introduced to me by Mrs Penny Anderson an eminent ecologist who, for example, has been responsible for the extensive ecological and landscaping works at Stansted Airport. One of Chris Burnett's principal clients over the years has been the Duke of Westminster.

3.3 Chris Burnett has been given full details of the type of works envisaged and also details of the tree species identified in the evidence of the two Councillors.

3.4 In his letter of 22nd November 1993 Chris Burnett confirms that none of the works envisaged would be likely to cause any material damage to the trees concerned subject to the caveat that holes should not be drilled closer than 1.5 metres from the trunk of any given tree.

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3.5. None of the proposed poles appears to infringe the 1.5 metre constraint although it might be prudent for a condition to be attached to any planning permission requiring the precise location of each pole to be agreed on site with the Local Planning Authority in respect of sites 13, 17, 19 and 33.

3.6 The Chris Burnett correspondence can be made available as a Appendix FFA 7.

4. LOCAL VISUAL ENVIRONMENT

4.1 This is clearly the primary issue to be determined as a matter of judgement by the Secretary of State having regard to his Inspector's report.

4.2 It is a simple matter of judgement and there is a clear conflict between my evidence, (which is generally supported by the opinions of the Council's Officers as expressed in their Committee report), and the Council's witness.

4.3 I think it is **however well worth commenting that Mrs Scott imposes a very high standard which is well summarised in her concluding paragraph 5.3 on page 79 where she says**

"..... I consider that the erection of additional poles and wire for whatever purpose will have a retrograde aesthetic consequence for our environment contrary both to well established National objectives and local planning policies". (my underlining)

4.4 It is certainly my opinion that such represents an extreme view which goes well beyond the normal test of demonstrable harm.

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5. VISUAL AMENITY OF ADJOINING RESIDENTS

5.1 Mrs Scott raises the "adjoining owners'" visual amenity objection in the cases of sites 02, 04, 05A, 08C, 09, 12, 18A, 18B, 19, 21, 23, 24B, 26 and 28 (ie a total of 14 sites).

5.2 It would appear that she regards mere "ability to view" as of itself objectionable. Again, this is a very severe and restrictive test which goes well beyond that which I would normally consider reasonable.

6. CONCLUSIONS

6.1 In my view there is no merit in Mrs Scott's evidence concerning trees, and she raises no traffic or highway safety issues.

6.2 On the subject of the local visual environment and local residential amenities she imposes very strict tests which go beyond what would normally be regarded as reasonable. In essence she argues against any new street furniture as a matter of principle; whereas the proper test is whether the proposed additional street furniture would change or damage the character of any particular scene.

6.3 Finally, nowhere in her evidence does Mrs Scott attempt to consider the balancing factors of need, nor the Council's positive policies in respect of Ethnic, Religious and Voluntary Groups.

7. CONSERVATION AREA EVIDENCE OF COUNCILLOR MR FRANK DAVIS

7.1 Councillor Davis raises the local visual environment issue in the context of the Conservation Area in respect of the five Conservation Area sites, and also raises the "adjoining owners" visual amenity objection in respect of three sites, Nos. 15, 16 and 17.

7.2 He also raises comments under the heading of trees.

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7.3 Concerning trees, my correspondence with Chris Burnett applies.

7.4 Concerning the substantive visual amenity issue I believe that it is important to note that Mr. Davis acknowledges in page 3 of his proof that street furniture is recognised as being part of Conservation Areas. The quotations he refers to on pages 3 and 4 merely indicate that it is the quality of individual items of street furniture that may be important in a particular Conservation Area, rather than there being a general need to restrict street furniture within such areas.

7.5 In his section 2 Councillor Davis quotes from various documents with the minimum of comment. In paragraph 2.4 he draws attention to advice suggesting that street furniture should be of an "appropriate character and quality" without giving any indication as to what might be an appropriate character and quality in this Conservation Area. He also draws attention to the need to avoid "unnecessary duplication of signs and poles" which is clearly not relevant to the Eruv appeals since, by definition, the proposed poles will not be duplication.

7.6 On page 5 Councillor Davis refers to a quotation relating to "excessive number of advertisements and traffic signs". Again, the proposed Eruv furniture is, by definition, irrelevant to that consideration.

7.7 In section 3 Councillor Davis describes the Hampstead Garden Suburb Conservation Area but it is only in paragraph 3.2 that he makes any attempt to define the character of this area. I have no quarrel with his comments in paragraph 3.2.

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7.8 I believe it to be very important that nowhere does Councillor Davis suggest that the character or quality of street furniture within the Conservation Area is any different to that found generally throughout the Borough outside the Conservation Area. There is no suggestion that the London Borough of Barnet has ever sought particular or special designs for individual items of street furniture within this Conservation Area.

7.9 It is also a matter of fact readily observable on the ground that street furniture within the Conservation Area is typical of the whole Borough.

7.10 The special character of the Conservation Area is therefore not found in any special approach to the design, quantity or quality of street furniture.

7.11 Of the individual site appraisals there is again a clear conflict between my evidence and that of Councillor Davis which will be a matter for the Secretary of State's judgement.

7.12 In my view it is important that Councillor Davis makes no attempt to consider the balancing factors of need, nor the Council's positive policies in respect of Ethnic Religious and Voluntary Groups.