

18.3
EVIDENCE OF
MISC. OBJECTORS

BE0612

items 1-19

Outline of evidence to be given orally at Public Inquiry

1. My full name is Stanley Frank BAILEY ("Bill")
2. I have ~~lived at~~ owned the house at 114 Hampstead Way for 28 years ~~for xxxxxx years~~ and have lived there continuously for the last ten years
3. I object to an eruv created by posts and wires because
 - (a) it is an unnecessary intrusion on other people's living space
 - (b) it is an intrusion with strong religious associations in a multi-ethnic area where religious intrusions should be kept to a minimum
 - (c) the proposers appear to have over-stated the number of people the scheme will benefit in that they are a small minority within the minority faith they profess.

(continue overleaf if necessary)

4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

In case you need it I enclose a copy of my c.v.

S. F. Bailey
S. F. Bailey CBE

Optional, but very helpful if possible] he undermentioned, who are my neighbours, share my views

ame Signature Address

[Handwritten signature line]

BE 06/2/2

My name is Carol Boulter. I live at 62 Corringham Road, NW11, where I have been resident for 16 years.

I object to the eruv because its poles are not merely poles, but symbols. A symbol in the simplest sense is anything that stands for or represents something else beyond it - usually an idea or concept with which the symbol is then identified. Objects like flags and crosses can function symbolically, as can a yellow patch of material in the shape of a star. Symbols become invested with emotion, authority, and power: they can arouse much emotion and can stimulate people to action, both good and bad.

In the case of the proposed eruv in the area where I live the poles and wire, which would have to be erected to make the eruv, lose their ordinariness by this very process, and become symbols. It seems to me disingenuous to argue that they are only poles and wire to those who oppose them. They are symbols for those who wish to put them up in order to make a symbolically enclosed area. But they are also symbols for others.

For me, these poles and wire symbolise the special areas in which certain people were differentiated and separated from the rest of the community with consequences of the kind that drove my maternal grandparents to leave Lithuania and to settle in South Africa. Half a century later my father fled to South Africa from Germany before he could be forced into a special area separated from the rest of the community by poles and electric wires. The rest of his family was killed in one of these special areas. I left South Africa twenty-seven years ago because I saw the destructive effects on the lives of both black and white of being forced to live in specially designated areas. I chose to live in England where I now find that my own neighbourhood is to fall within an area a particular group hopes will become, with the official sanction it may receive as a result of this enquiry, a specially designated area by virtue of - poles and wires. Symbols are indeed very powerful.

26th October 1993

Carol Boulter

STATEMENT BY LADY BOWLBY

Lady Bowlby will say:-

My name is Xenia Bowlby. I have lived at Wyldes Close Corner and Boundary House, Hampstead Way, London, NW11 for 30 years.

1. I object to the erecting of Eruv poles because I don't like the concept of a religiously - and in this case racially - demarcated zone. The boundary seems to impose a consciousness of itself in a very negative way: either one has a proper boundary with certain points of entry and exit, or one has a purely notional area within which certain rules do or do not apply, and which is known only to those to whom it is of interest. To have a semi-real boundary seems to be the worst of both worlds for everybody - Jews who need to know can easily find out where a notional runs without running the risk of arousing anti-semitic feelings in unreasonable people (there sadly are some), and everybody else in this peacefully multi-cultural area will be free as they always have been to go about their religious/cultural/ethnic business.
2. I myself am partly Russian and belong to the Russian Orthodox Church (I sing in the choir and am a member of the Parish Council). I appreciate my freedom to be myself in a place with no boundaries. I consider that the Eruv poles would be a symbol of divisiveness and might encourage a minority group to predominate in the area. I also feel that the concept of an Eruv, which is a sophistry enabling people to disregard a law of their religion, is a trivialisation of religious commitment.
3. In view of the nearness of the proposed posts to our house, I would be conscious of them in the course of most daily activities, and this I would find unpleasant.

BE06/2/4

14 Heathcroft
Hampstead Way
London
NW11 7HH
081 458 3194

1st November 1993

To whom it may concern

The ERUV

I FRANK HENRY COLLINS of 14 Heathcroft, Hampstead Way, London, NW11 7HH wish to register my protest to the proposed ERUV to be built in Barnet and particularly to the inclusion of parts of Hampstead Garden Suburb and Hampstead Heath in the enclosed area. I have lived and worked in Hampstead since September 1983 and there are three specific reasons for my objection which are as follows:-

1. Breaking down and changing the existing cultural mix.

Hampstead Garden Suburb is, at the present time, one of the more interesting and rewarding places to live in London, not least because of the wide mix of races and religions that are represented within the community. Any artificial element that changes this balance by favouring any one group, almost therefore by definition to the detriment of the other groups, should not be allowed to proceed. The effect of the proposed ERUV, if not its intention, is to make all of the area enclosed in the ERUV more desirable to the Orthodox Jewish Community, although as I understand the position, the Ultra-orthodox and the Liberal Jewish communities do not support the ERUV, and to therefore increase artificially the proportion of one specific group in this community to the detriment of the community as a whole.

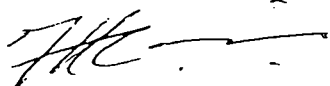
2. Increasing tension in what historically has been a very liberal and tolerant community.

It can be seen from the discussions and meetings that have already taken place in Barnet and those in Hampstead Garden Suburb that the community is tending to polarise into 'pro' and 'anti' ERUV groups. This type of disagreement, particularly where it has both a racial and a religious background, will create tension and lead to an increase in social and racial disharmony when we should all be doing everything we can to encourage tolerance and good relations within the community. If the ERUV goes ahead across part of Hampstead Heath it is quite possible that it will become the focus for anti-semitic elements within the metropolis who would register their feeling by attempting to break the ERUV, again leading to more confrontation.

3. Creating a precedent on Hampstead Heath itself.

Although not unique, Hampstead Heath is a marvelous open space that has been protected by past generations and is currently maintained for the enjoyment of all Londoners and visitors from far and wide. All limitations of any sort on its use should be resisted almost as a matter of principle. If the ERUV goes ahead, what is to stop the next group from asking for enclosures, special privileges and then limitations as to the use of parts of the Heath. Each step being quite inoffensive in itself but each one being a little bit further than the last. I personally am not against progress or change but the possibility of another part of Hampstead Heath being enclosed in any form for the privilege of one particular group could and I'm sure would create even more problems when the next group apply for special status.

Yours faithfully

A handwritten signature in dark ink, appearing to be 'FHC' followed by a long horizontal stroke.

Frank H Collins

Outline of evidence to be given orally at Public Inquiry

1. My full name is Derek Coltman
2. I have lived at 135 North End Road, NW11, for 18 years
3. I object to an eruv created by posts and wires because:

i) Disharmony

Such a development would be divisive and create disharmony and unsettling for race relations. Already Jews who have spoken out against an Eruv have been branded "anti-Semitic" by the pro-Eruv group.

ii) An Unwelcome "Ghetto"

An eruv would create an unwelcome ghetto, abhorred by local Jews, some of whom escaped the ghettos of Europe during the Second World War. Supporters of the ghetto have already voiced the opinion that such a "ghetto" would bring in "new blood", meaning many other Jews who decided that they would like to live within the bounds of an eruv would move to the area. This would go against the grain of the original idea of mixed communities.

iii) A Dangerous Precedent

It is ill-advised to grant any such privileged concession to any section of the community, whatever race, colour or creed. It establishes a dangerous precedent.

iv) Not a Public Matter

The problem that Jews may have on the Sabbath is of no concern to Barnet Council as it is purely a private religious matter and should be settled by the Jewish community.

v) Territorial Demarcation

The supporters of the proposed eruv talk of a "notional eruv" when, in fact, they are seeking a "territorial demarcation" with poles and wires. This is an intrusion on the public domain. If it were simply a "notional eruv", this could be designated by a rabbi without recourse to poles and wire.

vi) Private versus Public Interests

- a) Private furniture and fittings should not be allowed in the public domain for the physical demarcation of private territory for any reasons, religious or secular.

4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

[Optional, but very helpful if possible]

The undermentioned, who are my neighbours, share my views

Name

Signature

Address

Outline of evidence to be given orally at Public Inquiry

1. My full name is Peter John Michael Fidler
2. I have lived at 237 West Heath Road, NW3, for 8 years
3. I object to an eruv created by posts and wires because as a practising Jew, and a member of a synagogue in NW8, I find it divisive and likely to cause anti-Semitism. The orthodox community are welcome to their religious practices, provided that they do not seek to impose their so-called needs on the rest of the community. This proposal, which is anyway of doubtful religious validity, will benefit very few people and cause a lot of ill-feeling.
4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

[Optional, but very helpful if possible]
The undermentioned, who are my neighbours, share my views

Name	Signature	Address
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BE 06/2/7

Outline of evidence to be given orally at Public Inquiry

1. My full name is John Henry Garcka
2. I have lived at 1 Dallas Road, Hendon, NW4 for 22 years
3. I object to an eruv created by posts and wires because it would look unsightly. It is not like having lamp-posts and road lights which are necessary. I don't see that a section of the Jewish community, who have lived in this country for many years, should decide that they need the erection of posts and wires now as they have managed in the past without them. It would also encourage other ethnic groups to demand certain conditions with regards their religion.
4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

[Optional, but very helpful if possible]

The undermentioned, who are my neighbours, share my views

Name

Signature

Address

B606/218



From: Lord Howie of Troon, 34 Temple Fortune Lane, London, NW11 7UL.
Telephone 081 455 0492-

Outline of evidence to be given orally at the eruv appeal:

My name is Lord Howie of Troon. By profession I am a civil engineer, a journalist and a publisher. I was a Member of Parliament for seven years from 1963 to 1970, and I have been a Life Peer since 1978.

I have lived in what is now the London Borough of Barnet since mid-1952, first in Princes Park Avenue and, since late 1954, at two successive addresses in Temple Fortune Lane.

My objections to the creation of an eruv marked out by physical means are as follows and are mainly social in nature. As I understand it, an eruv is intended to expand the definition of the Jewish home, establishing a larger private domain or communal area. It is, according to the London Times (25 February 1993) 'a symbolic area in which many of the prohibitions of the Jewish sabbath are suspended'. The Times goes on to say that 'the limits of an eruv are of immense significance to those that believe in its mystical meaning'.

So the creation of an eruv is much more than a means of allowing a number of people to carry such things as keys and spectacles or to push prams or wheelchairs. If an eruv were to be permitted in Barnet, part of the Borough would acquire a religious significance



which it does not at present have, a significance which would be imposed on the great majority of that part of the Borough who are either not Jewish or are Jews whose practices have relaxed some of the prohibitions of their religion or are Jews who comply willingly with these prohibitions. Of course, such an eruv as that proposed would be of no value to Jewish people living outside its area whether in neighbouring parts of Barnet or elsewhere.

If this part of Barnet were in fact a Jewish enclave, the proposed eruv might be acceptable despite the intrusive nature of its boundary markers and their territorial symbolism. But it is not, and a proposal which is of benefit to only a small proportion of Barnet's residents should not be imposed on the vast majority.

I support the Barnet Eruv Objectors Group in its opposition to the proposed eruv.

Howie of Troon (4 November 1993)

Howie of Troon

Outline of evidence to be given orally at Public Inquiry

1. My full name is Christopher Woodroffe Ikin.
2. My family home has been at 1 Wildwood Rise for 72 years. For about 20 years until my mother died, I lived further down Wildwood Road. I was, of course, absent during the War.
3. I object to an eruv created by posts and wires because
 - a) My gate already opens upon a tree, a telephone pole and a street lamp. I do not want another pole added.
 - b) The pole is not proposed upon Barnet's land.
 - c) The wires from pole to lamp-post and so on will cross the highway on curves.
 - d) The proposal is likely to cause religious tension.
 - e) I am a Baptist. If some strict Baptists proposed such a scheme, I would oppose it.
4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv.

WITNESS STATEMENT - EVA JACOBS

My name is Eva Jacobs, and I live at 3 Sutcliffe Close, London, NW11. I have lived in the same house in Hampstead Garden Suburb for 31 years. I am Jewish, and consider myself to be deeply committed to the Jewish people and its history. I came to England as a refugee with my parents in 1940. I lost all four of my grandparents in the Holocaust, as well as several aunts, uncles and cousins. One or two survived, and went to Israel after the war. I have no relatives in England, apart from my immediate family, and those gained by marriage with my husband, whose family have been here since about 1880.

In the 31 years of my marriage, I have been fortunate enough to live in an area that was founded upon the principles of neighbourliness, tolerance and harmony between different kinds of inhabitants. When Dame Henrietta Barnett created the Suburb, the different kinds of inhabitants she was envisaging were those of different classes, all living closely together. But religion also played a part, and the two churches at the centre of the Suburb - the Anglican Church and the Free Church - bear witness to that desire for religious concord. Later, others saw the beauty and social harmony of the Suburb, notably a large number of Jews, and they came to live here. They were made welcome by the existing community, and were able to share in the vision of Henrietta Barnett.

To those of us accustomed to, and appreciative of, what so many people in the world would envy as a model of racial and religious harmony, it has come as a shock to discover that a small group of self-appointed zealots want to change established arrangements. I want to begin by meeting head-on the argument that the creation of an Eruv concerns no-one but those who want it, that it does some people some good, and does nobody any harm. It is noteworthy that the original claims of the Eruv Committee that tens of thousands of Jews would benefit from the Eruv has now been scaled down, in the face of huge opposition from Jews themselves, and in the face of statistical facts (which I shall come back to). It has been scaled down to the argument that even if only a handful of people benefit, the Eruv is still a worthwhile project because (and I quote) "a few poles and wires don't hurt anyone". This is an important argument, and seemingly persuasive. But the emerging situation itself is already disproving it.

The proposal for an Eruv has already done immeasurable harm. The opposition it has aroused among people of all religions and of none, from all walks of life and of all ages, is obviously harmful in itself, for it has divided a previously peaceful community - but that opposition is itself based on the perceived harm that the creation of an Eruv would entail. I cannot mention every aspect of that harm, but I must make two main points.

First of all, there is the fact that a small minority is asking for special arrangements to be made for its convenience. These special arrangements have to be sanctioned by the state - through the planning permission required for the erection of boundaries - and therefore have civic force and public significance. But

these special arrangements by no means involve only those who want them. They have a fundamental geographical dimension: they are drawn out on a map; physical boundaries have to be created. And within those physical boundaries around 80,000 people will be enclosed, the vast majority of whom have no desire at all to live within a private Jewish domain - as the Eruv is described in the literature. An analogy has been made with parish boundaries. This is a false analogy. Parish boundaries were created at a time when the population was essentially homogeneous, and they were an administrative division general throughout the land. The Eruv is an attempt to section off a large part of Barnet as being of special religious significance apart from the rest of the land. Whatever the intention, to outsiders it looks like a claim for territory - and this is a fundamental element in the anxiety the Eruv has aroused.

Secondly, at an immediately practical level, the Eruv is perceived as targeting a particular area and designating it as a religiously appropriate one for observant Jews to live in. As a result of the special arrangements which will have been made, if the Eruv application succeeds, observant Jews will be drawn in and encouraged to live there. As the balance of the current mixed population changes, those who do not subscribe or conform to those observances may well begin to feel uncomfortable or unwanted, and will leave. The process of change will then be accelerated. Of course, the complexion of various areas is changing all the time. Fifty years ago, there were few Jews, if any, in Hampstead Garden Suburb. I myself met a very smart lady once - just before I came to live in the Suburb - who told me that she had left the Suburb for Kensington because too many Jews were moving in. (she was an exception to the rule that the community has welcomed gradual change). "Hard luck", I said, politely. But whereas, on the whole, people accept the changes brought about by natural movement of populations, the changes wrought by a special request for privileges leading to unnatural movement will bring exceptional resentment.

The whole business has been received with bewildered incomprehension and unease, and has left large numbers of decent people confused and fearful of seeming to be anti-semitic.

I could go on: already the harm is great; potentially, it is enormous. What about the benefit?

The Eruv proposals are designed to benefit orthodox Jews who are both members of the United Synagogue and are strictly observant. Within the proposed Eruv boundaries there are 4 congregations belonging to the United Synagogue. The 1992 Annual Report of the United Synagogue records that the membership of those 4 congregations was a total of 6000 men and women. Further, research in the 1992 United Synagogue Review "Time for Change" shows that only 10% of its members regard themselves as "strictly orthodox", and no more than an additional 9% could in any way be regarded as consistent in their subscription to some of the "more demanding practices", e.g. not travelling by car on the Sabbath. That means that only 1140 men and women of the 4 congregations in Barnet would directly benefit from the proposed Eruv in some way. An even smaller number is, of

course, "chairbound" in any sense. The 1991 Census showed that in Barnet just under 22% of the population were in the age groups 0-4 [6.66%] and over 65 [15.14%]. So even if we assume that all the parents of under 4s are pushing prams and that all the over 65s are physically handicapped, the total number of those for whom the special pleading is made so strongly drops to just 250. Can the real total be as many as 100? I would be the first to argue that a real benefit even to only 100 people that does no harm at all to anyone else should be implemented if at all possible. But when the harm is to everybody (including, in my opinion, those very 100 people, because of the general damage to society), then surely the interest of society as a whole should prevail.

I want to end by venturing rather nervously into the realms of Jewish religious belief. But this is not a subject that can be avoided. The point has to be made that there is no such thing as Jewish orthodoxy. As far as I know, the United Synagogue is the biggest grouping of synagogues in Great Britain, and that is why its head is recognized as the Chief Rabbi. But again, there is no analogy at all with the position of the Archbishop of Canterbury or the head of the Roman Catholic communion. The Chief Rabbi acts as the religious spokesman for the Jewish community - but he is not the only spiritual authority. Different groups, some large, some small, recognize different religious leaders with divergent beliefs. It is a mistake to think that because the proposal for an Eruv has come from a committee of the United Synagogue, either they speak for all Jews, or the need for an Eruv is accepted by all observant Jews. Both are far from the truth. Various rabbis have spoken out firmly against the proposal, on all sorts of grounds - for "orthodoxy", among Jews, is not fixed, but a matter for continuing scholarly debate. The United Synagogue has been in existence in Great Britain for 150 years, and has managed perfectly well without Eruvs throughout the whole of that period. Presumably, the scholarly debate within the United Synagogue has now concluded that an Eruv in Barnet is essential. Why? Only they can tell us. But even if that conclusion has been reached, others are concluding quite differently. There has been no matching demand from other religious groups. For example, the Liberal Synagogue takes the view that

a) in Jewish Law, the disabled and other disadvantaged people can be allowed dispensation from the Sabbath restrictions, and

b) it is contrary to the spirit of Jewish Law for Jews to impose their own religious observance and practice in a way which is inimical to the majority around them.

Indeed, this latter point was also so important to an orthodox scholar, Rabbi Yonoson Shteif, one of the organizers of the Eruv in Manhattan, that he resigned from direct involvement when he discovered that the plans for the Eruv were causing friction.

Moreover, at the most orthodox end of the spectrum, in an article in the *Jewish Chronicle* in 1988, Rabbi Padwa, described as Great Britain's foremost halachic authority (i.e. authority on Jewish Law), was reported to have decided,

with the agreement of several other Rabbis, that an Eruv is a "violation of the Sabbath" and that "an Eruv in London is impossible". There is no doubt that this is a theologically controversial subject.

A small number of people want an Eruv; a tiny number would benefit. The proposal has already caused nearly irreparable harm. If the application is granted, that harm will be compounded. I am appalled both by the possibility of the Eruv being established, and the astonishing insensitivity of those who are continuing to pursue their private objective in spite of the widespread dismay and opposition it has already engendered.

BE-06/2/11

081-455 1691

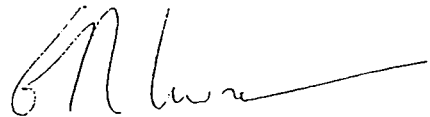
107 Wentworth Road,
London,
NW11 0RH

18th October 1993

Statement of objection to Eruv in North West London

My name is Elizabeth Russell Lawrence, I live at 107 Wentworth Road, London, NW11 0RH and I object to the proposed Eruv in North West London for the following reasons:

1. There is more than enough street furniture in the Borough and any additions should be strictly for utilitarian purposes only and for the benefit of the whole community not a very small minority. The proposed poles and wires will be extremely unsightly, hazardous and due to their purpose, likely to attract vandalism.
2. I find it grossly offensive to be forced to live in an area marked out as a 'private domain' so that a very small number of people can evade certain religious customs to appease their consciences.
3. Living in a democracy I do not believe it is right or proper to grant exclusivity to one group rather than another particularly in this case when the Jewish Community itself is split over this proposal. As I have already said the number of people who would benefit from the proposal is infinitesimal but the harm it would cause to an harmonious community is immeasurable.



BE06/2/12

Outline of evidence to be given orally at Public Inquiry

1. My full name is Barry John McTeare
2. I have leased a lock-up shop at 2 Station Road, Finchley, N3 for 37 years
3. I object to an eruv created by posts and wires because
 1. There is already too much 'street furniture' and this will be an unnecessary addition.
 2. As we are now a multi-cultural society if this is granted the way will be open for the hare-brained demands of any minority group.
 3. The community requesting this has managed for hundreds of years without - why suddenly now?
 4. If they feel so strongly they should remove and live in a totally Jewish environment i.e. Israel.
4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

[Optional, but very helpful if possible]

The undermentioned, who are my neighbours, share my views

Name

Signature

Address

Outline of evidence to be given orally at Public Inquiry

1. My full name is MR IAN DONALD MARSHALL
2. I have lived at 1 Sunnyside, Childs Hill, London, NW2 2QP for 7 years.
3. I object to an eruv created by posts and wires because, in no particular order:
 - i. It is already proving to be highly divisive not only between Jew and Gentile but particularly among the Jewish community.
 - ii. It would be an' unwise precedent for any group (minority or otherwise) to be allowed to erect substantial items in the streets, on a permanent basis.
 - iii. (a) Pavements have enough poles and posts already, apart from other hazards.
(b) My own road is bad enough already.
 - iv. It will encourage segregation/ghetto mentality.
 - v. The declaring of a particular Jewish area may encourage the National Front and others to target it.
 - vi. Despite the wording of the application, only a tiny minority of the local Jewish community want the ERUV.
 - vii. What happens if the posts are subjected to regular vandalism and the insurance bond offered by the ERUV Committee becomes too expensive or is withdrawn?
 - viii. I would need substantial evidence to accept that the experience of American towns (and Australian?) proves that an ERUV would be a good idea in London.
 - ix. If there must be one, the M25 seems a far more suitable barrier; I understand the argument about the barrier/fence having to be reasonably near Jewish communities at all times is untenable. Such a large ERUV would automatically solve most if not all the other problems.
4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

[Optional, but very helpful if possible]

The undermentioned, who are my neighbours, share my ~~views~~ opposition in general

Name	Signature	Address
Harry and Anna Orkin		2 Sunnyside, NW2
Jo and Maggie Dyer		4 Sunnyside, NW2
Occupants of		10 Sunnyside, NW2

My full name is DAVID DUDLEY READ

I have lived at 25 Temple Fortune Hill NW11 7XL for twenty nine years.

I object to an Eruv created by postal wires because

1. The liberal mixed faith and secular population in Hampstead Garden Suburb do not want the area they live in to be designated as part an orthodox Jewish area.
2. The right of an activist religious minority to encircle a liberal mixed faith and largely secular community such as the Hampstead Garden Suburb must not transcend the rights of the majority who do not want it.
3. The variety of peoples and beliefs so characteristic of Hampstead Garden Suburb will in the long term be undermined by the creation of a designated religious area representing the views of orthodox Jews who are unfortunately less tolerant of variety than the "main stream" community. There is evidence that they are prepared to adopt strong tactics to achieve their ends.
4. The erections of poles could in themselves create the objects on which the activities of anti-semitic minorities would be focused. The longer - term danger is that residents will find themselves firstly in a political battle ground, and secondly if the structures are attacked (as they may well be) a rather more unpleasant battle ground.
5. The long history of Hampstead Garden Suburb and its interdenominational and liberal minded population is highly valued by all its residents including Jewish residents, and must be respected and preserved.

Eruv Statement

My name is Elizabeth Segall and I have lived at 308 Cricklewood Lane for 37 years.

I support the Barnet Eruv Objectors Group for the following reasons:

Particular objections to poles and wire construction in Lyndale Avenue (site 04).

1. I would perceive this as a divisive symbol, offensive to my humanist conviction. One pole would be sited six inches from our fence, and the construction would be visible from the windows of five rooms in the house, and from every part of the garden, depriving me of my pleasure and relaxation as a keen gardener. I would have to pass under the wire in order to carry out many everyday activities, or when driving from or to my home. All of this is totally unacceptable to me, and I will use every possible legal means to oppose it.

2. To add insult to injury, permission to erect this construction would allow the Eruv Committee to use our fence and house front as part of their Eruv Boundary without seeking our consent and in the face of our opposition. This presumption shows their lack of respect for the 'private domains' of others.

3. The poles would be an open invitation to intruders (despite the Council's suggestion to use anti-vandal paint). The siting so close to the fence (and opposite wall) ignores the Police General Advice to Householders to Prevent a Burglary, which states, 'Metal drainpipes are...as good as ladders' to gain access.

4. The siting could endanger us and others and damage our property by falling as a result of accident, vandalism or inadequate maintenance. Being at the foot of a hill, it is a vulnerable corner, and the construction would be an additional risk factor if struck by a car.

5. The value of the property could fall (a) for the above reasons, and (b) because it is to be expected that most prospective buyers would prefer to live either within the Eruv area or outside it, not on the boundary.

General Objections to the Eruv Proposal

1. Barnet is an ethnically mixed borough (I myself taught for 20 years at a school with children from no less than 28 nationalities) and enjoys peaceful community relations. The Eruv proposal has already caused tensions within the community, and threatens even more divisiveness.

2. Form TP Part 1, Q6A asks 'Are there any trees on or adjoining the site?' The Applicant's answer, dated 10th July 1992 is 'no', yet there are trees along the Conservation Area of Wildwood Road adjoining site 13, and also in Hermitage Lane adjoining site 8c. Moreover if the Eruv Committee were to follow the rules in the Eruv Manual by Bertram Miller, they would be required to keep the wires clear of foliage by cutting the trees back. This is quite unacceptable.

3. The Eruv proposal is not to help people in a religious observance, but in non-observance of a religious law. Although the Eruv Committee claim that the proposal would benefit thousands of Barnet's Jewish residents, the real number is unknown, and is likely to be very small. The four United Synagogue synagogues in the proposed Eruv area have a membership of only 6000. The United Synagogue's Kalms Report found that nationally two-thirds of members used their cars on the Sabbath, which is a more serious breach of observance than pushing or carrying. Of an estimated 2000 remaining, the number of disabled persons and infants needing to be pushed or carried on the Sabbath must be very low.

4. Members of the Jewish faith in Barnet have hitherto managed by observing or not observing the relevant law or custom according to individual conscience and circumstances, and doubtless could continue to do so.

5. The proposed poles and wires would be perceived by some Barnet residents as an affront to other religions and convictions, and to some survivors of the Holocaust it is a reminder of their suffering. It is also possible that some individuals or groups would seek to damage the poles or wires, leading to civil unrest.

Elizabeth Segall

Outline of evidence to be given orally at Public Inquiry

1. My full name is Anastasia Helen Stavrou.
2. I have lived at 138 Station Road, Hendon, NW4 for 42 years
3. I object to an eruv created by posts and wires because I consider that the erection of a total of 85 poles supporting 942 metres of wire at various sites around the London Borough of Barnet would be very unsightly and a potential danger to residents and wildlife. I am concerned that the poles could be knocked down either by high winds or malicious damage or accident causing the wires to break and this could cause injuries or damage to property. I also feel very strongly that the London Borough of Barnet serves a multi-cultural community and that to single out and give preference to any particular race or religion could give rise to bad feelings and would not help racial integration. Also, in view of recent disturbances in other parts of London against ethnic minorities, I feel that the creation of an Eruv could encourage unwanted attentions from such organisations as the BNP and this would be very unwelcome for the majority of Barnet's residents.

Personally, as someone who comes from an ethnic background (Greek Cypriot), I have always respected other peoples' beliefs and customs, but I would never try to inflict my beliefs and customs on others.

4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

[Optional, but very helpful if possible]

The undermentioned, who are my neighbours, share my views

Name

Signature

Address

BE06/2/17

Outline of evidence to be given orally at Public Inquiry

1. My full name is Peggy Wand
2. I have lived at 41 Hermitage Lane, NW2, for 44 years
3. I object to an eruv created by posts and wires because I already have one post (i.e. a lamp-post) on one side of my house. The council have planted a tree on the other side - now I will have a post nearer my drive out of the house. As there are double yellow lines further down Hermitage Lane, people park half-way over my exit. At times I have to drive out at an angle or enter at an angle - this post would restrict my entry or exit on a busy road and could cause an accident.
4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

[Optional, but very helpful if possible]

The undermentioned, who are my neighbours, share my views

Name

Signature

Address

Outline of evidence to be given orally at Public Inquiry

The Reverend John Pounsberry Wainwright.

I live at All Saints Vicarage, Church Walk, Childs Hill, London NW2

I have been Vicar of All Saints Church, Childs Hill, for 19 years.

I am opposed to the proposal to create a Jewish "eruv" by the erection of posts and wires because:

1. They would represent an incorrect statement about the nature of the area, that is, that this is "the Jewish area" (as opposed to a Jewish area, because it would have the special significance of being marked out as the "Jewish domain".
2. Hitherto, this area - Childs Hill - has been multi-cultural and its residents have enjoyed harmonious relations, especially so in that the Jewish residents in the area have been totally integrated with the others. The question of whether one's neighbours were or were not Jewish has had - for the most part - little or no relevance.
3. Since the inception of the proposal for an Eruv I have become aware of resentment within this community at the possibility of an eruv being imposed upon the area.
4. I have observed a great deal of division within the Jewish community itself, and between Jewish and non-Jewish neighbours, and aggressive statements have been made - "I'm going to chop all the poles down"; "I think they all ought to go home";
5. In order to attend my church the majority of my parishioners would have to pass directly underneath the wires constituting the "gateways" across Lyndale Avenue, Childs Hill Walk, Farm Avenue, Sunnyside, Ridge Road, Hendon Way or Finchley Road, indicating that they were passing into or out of a Jewish domain.
6. The reason for the proposals is that a group of religious fundamentalists wish to be able to apply a double standard (possible extension, or origin, derivations, etc).

BE66/2/19

Outline of evidence to be given orally at Public Inquiry

1. My full name is ANGELA ROSEMARY WHYTE
2. I have lived at 143 Great North Way, Hendon, NW4 1PP for 27 years. Telephone number 081 203 1762.
3. I object to an eruv created by posts and wires because

I will defend any citizens right to follow their own culture within the privacy of their own homes or places of worship; just so long as it affects no-one else.

However, I cannot see any justification for a small sect to be allowed to affect the lives of the majority of the people in the proposed area. By establishing an enclosed area (be it by physical or notional barriers) a ghetto will be formed and could attract the attentions of extremists to us all.

There is enough necessary street furniture as it is, I cannot see why extra poles, wires, banners or anything else, should be allowed to festoon public roads and places; or is it only supporters of the ERUV who are to be permitted "special privileges"? Why not other groups? surely they also should be free to litter land not owned by themselves. This could be the thin edged of a very large wedge.

Our home and its boundary - which we own, maintain and pay council tax on is apparently part of the proposed ERUV. By what right does the United Synagogue Eruv Committee presume to use my property for their own purposes? without my permission. What extreme arrogance!

My neighbours feel the same, and therefore a gap of some 66 feet will exist, thus breaking the ERUV.

I absolutely refuse to allow any barrier (either physical or notional) on my land, and if this should be allowed, I intend to erect suitable evidence of my religious persuasion (within my boundary) to show that I am not part of the ERUV and have no doubt that others will do the same.

4. I support Barnet Eruv Objectors Group in their opposition to the proposed Eruv

[Optional, but very helpful if possible]

The undermentioned, who are my neighbours, share my views

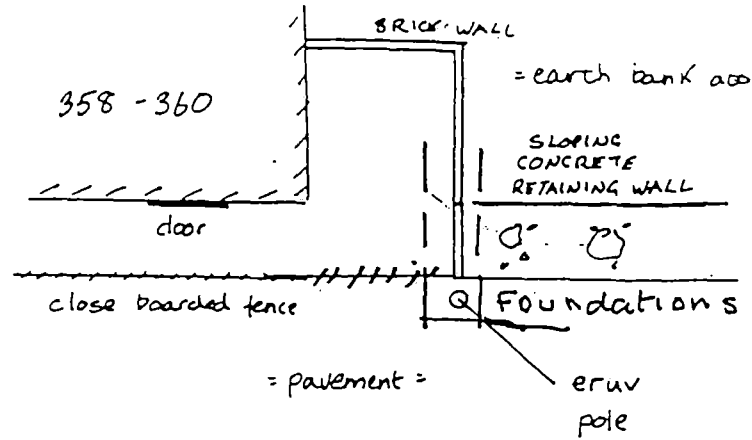
Name	Signature	Address
Mr and Mrs A Trivedi		145 Great North Way Hendon NW4 1PP

05 A : SUNNYSIDE

SCHEMATIC SHOWING LOCATION OF POSTS

1/ EAST POLE

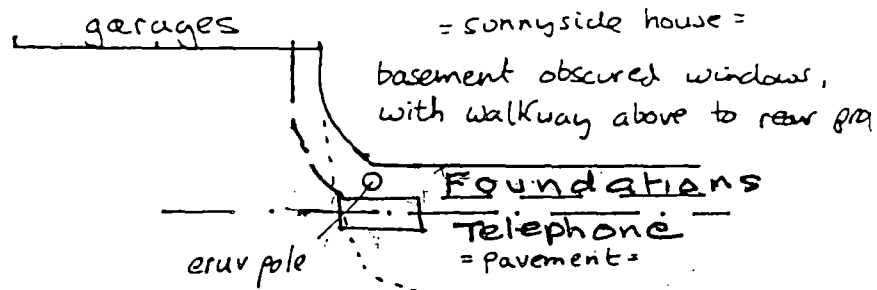
AT REAR OF PAVEMENT, 15cm FROM
BRICK AND CONCRETE RETAINING WALLS
TO SOUTH OF DRIVEWAY AT THE REAR
OF 358-360 CRICKLEWOOD LANE



(view east)

2/ WEST POLE

AT REAR OF PAVEMENT, 15cm FROM
CONCRETE WALL OF SUNNYSIDE
HOUSE JUST NORTH OF THE
DRIVEWAY TO THE GARAGES.



(view west)

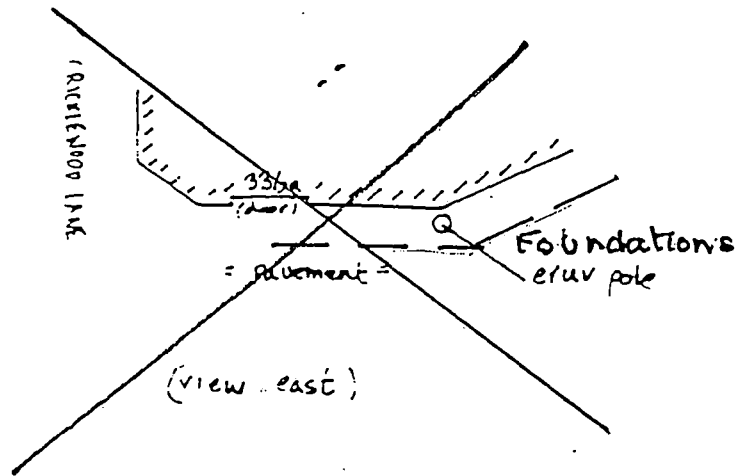
Location 32 Childs Hill Walk
~~Page 91~~ Page 91.

OS B: RIDGE ROAD NW2

SCHEMATIC SHOWING LOCATION OF POSTS

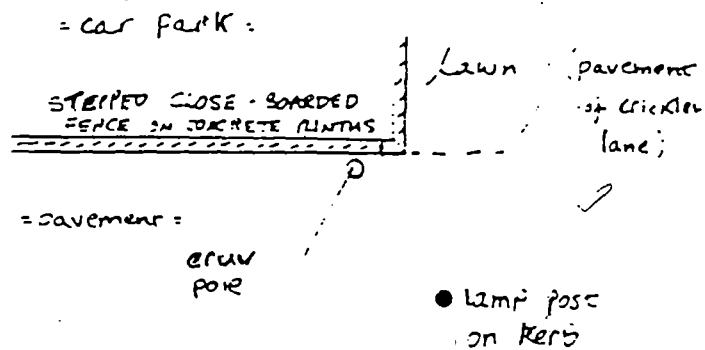
1/ EAST POLE

AT REAR OF PAVEMENT, WITHIN 15cm
OF SIDE WALL OF 336 CRICKLEWOOD LANE.



2/ WEST POLE

AT REAR OF PAVEMENT, WITHIN 15cm
OF CLOSE-BOARDED FENCE SURROUNDING
SMALL CAR PARK ADJACENT TO
324-334 CRICKLEWOOD LANE

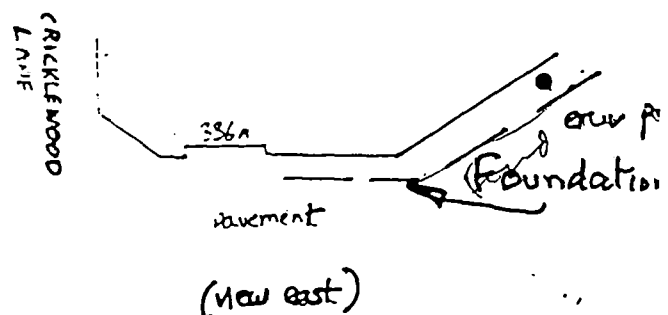


OSB

RIDGE ROAD NW2

AMENDMENT JANUARY 2013

REPOSITIONING OF EAST POLE TO AVOID DRAINPIPE, FLANK WINDOWS
AND ADVERTISING HOARDING.

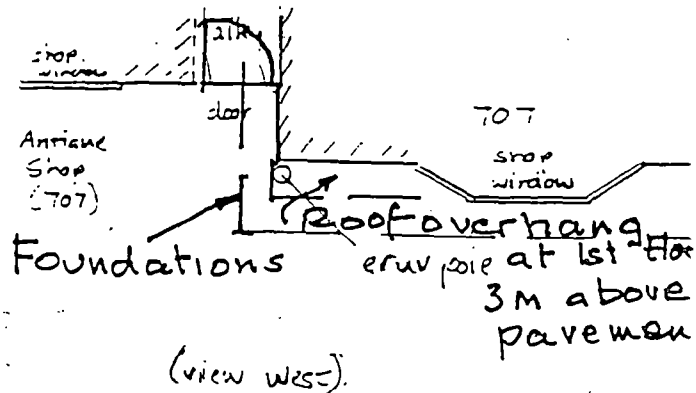


06 : FINCHLEY ROAD NW2

SCHEMATIC SHOWING LOCATION OF POSTS

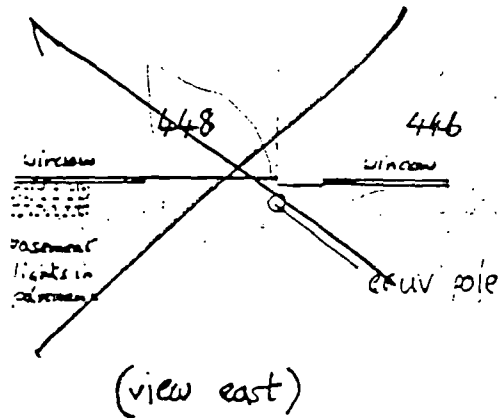
1/ WEST POST

AT REAR OF PAVEMENT, 15 cm FROM CORNER OF TOT FINCHLEY ROAD BETWEEN R.H. SHOP AND L.H. ANTIQUE SHOP'S SIDE DOOR TO ALLEY



2/ EAST POLE

AT REAR OF PAVEMENT, c15cm FROM WALL OF TERRACE OF SHOPS, ON PARTY LINE BETWEEN 448 (MICHAEL HARRIS) AND 446 (JUST AROUND THE CORNER RESTAURANT)

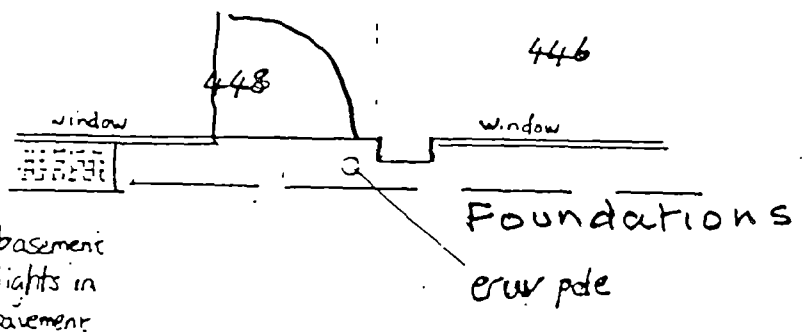


06 FINCHLEY ROAD NW2

AMENDMENT JANUARY 1993

SCHEMATIC SHOWING LOCATION OF EAST POST

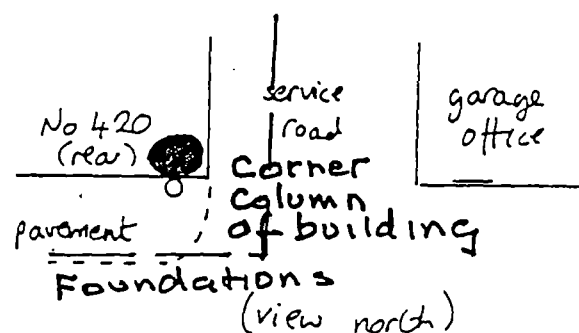
AT REAR OF PAVEMENT, 15 cm FROM WALL OF TERRACE OF SHOPS, TO THE NORTH OF PARTY LINE BETWEEN 448 (MICHAEL HARRIS) AND 446 (JUST AROUND THE CORNER RESTAURANT)



SCHEMATIC SHOWING LOCATION OF POSTS

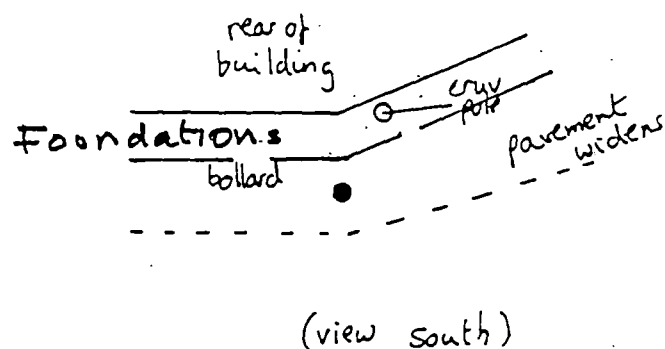
1/ NORTH POST

AT REAR OF PAVEMENT, c 15cm FROM CORNER OF 420 FINCHLEY ROAD "HEATH WEST" - SERVICE ROAD LEADING TO PARKING AND CAR REPAIR WORKSHOP, WITHIN 1m OF FLANK WALL.



2/ SOUTH POST

AT REAR OF PAVEMENT, c 15cm FROM BRICK WALL JUST WEST OF THE STEEL BOLLARD WHICH IS WITHIN THE PAVEMENT, WITHIN 1m OF THE ANGLED CORNER

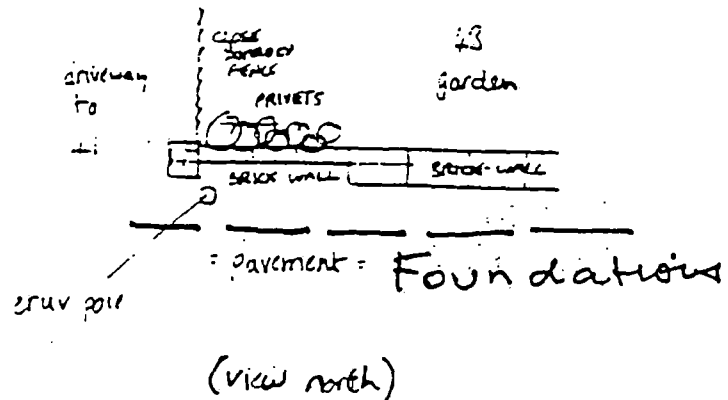


08 C : HERMITAGE LANE. NW2

SCHEMATIC SHOWING LOCATION OF POSTS

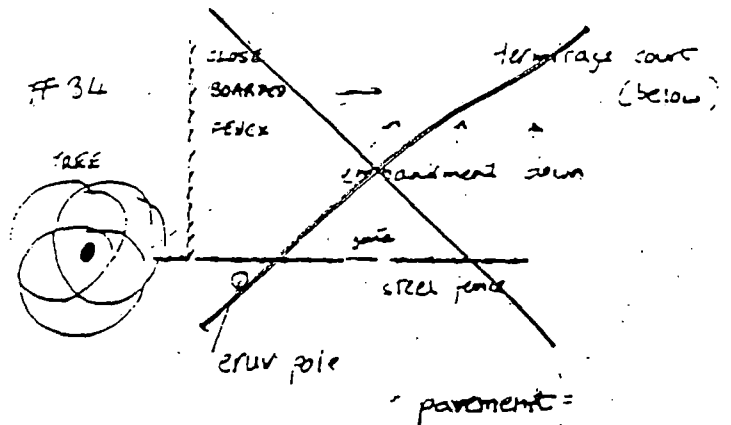
1/ NORTH POLE

AT REAR OF PAVEMENT, c 15 cm
FROM BRICK WALL AT FRONT OF 43
HERMITAGE LANE, TO THE EAST OF
ENTRANCE DRIVE TO No. 41.



2. SOUTH POLE

AT REAR OF PAVEMENT, TO THE
WEST OF THE LARGE (OAK) TREE
WHICH STANDS AT THE BOUNDARY OF
34 HERMITAGE LANE (CLOSE BOARD
FENCE) AND THE EMBANKMENT DOWN
TO HERMITAGE COURT.

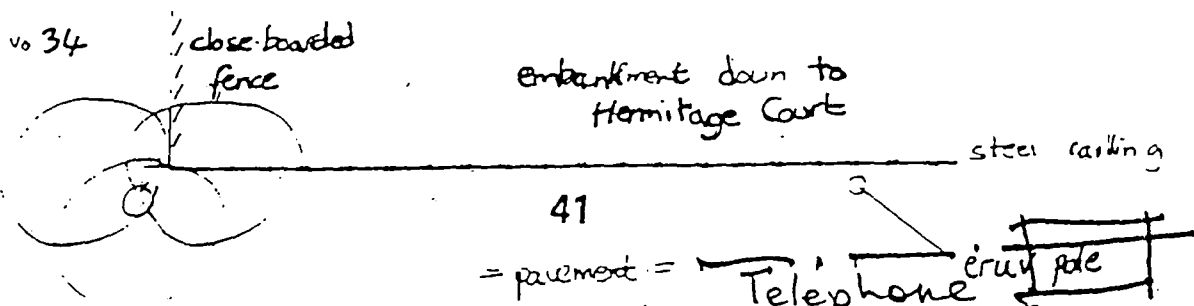


08 C : HERMITAGE LANE NW2

AMENDMENT JANUARY 1993

SCHEMATIC SHOWING LOCATION OF SOUTH POLE

AT REAR OF PAVEMENT, 6m TO THE NORTH WEST
OF THE LARGE OAK TREE WHICH STANDS AT
THE BOUNDARY OF NO 34 HERMITAGE LANE.

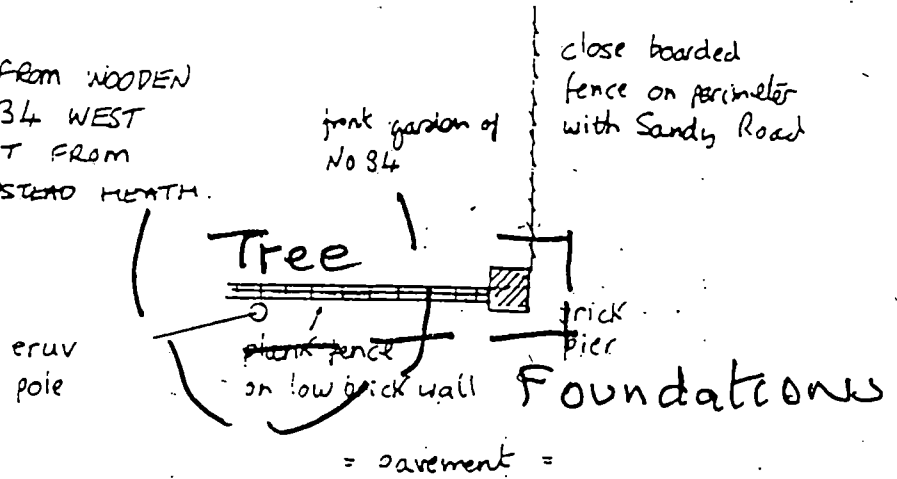


09 WEST HEATH ROAD, NW3

SCHEMATIC SHOWING LOCATION OF POSTS

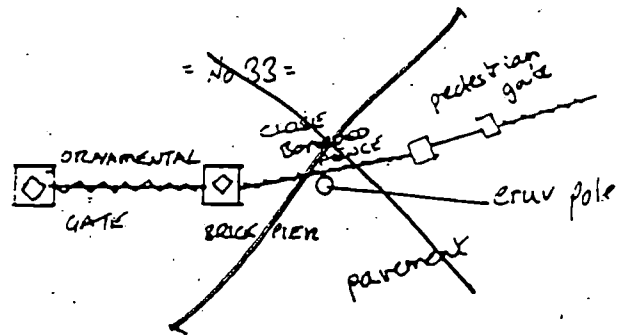
1/ NORTH POST

AT REAR OF PAVEMENT, 15cm FROM WOODEN GARDEN FENCE IN FRONT OF 34 WEST HEATH ROAD, 5m NORTH WEST FROM CORNER WITH SANDY ROAD / HAMPSHIRE HEATH.



2/ SOUTH POST

AT REAR OF PAVEMENT, 15cm FROM CLOSE-BOARDED FENCE WHICH FORMS THE FRONT GARDEN BOUNDARY TO NO 33 WEST HEATH ROAD (THE LODGE) MIDWAY BETWEEN THE PEDESTRIAN GATE AND THE NORTH PIER OF THE (UNUSED) ORNAMENTAL GATES

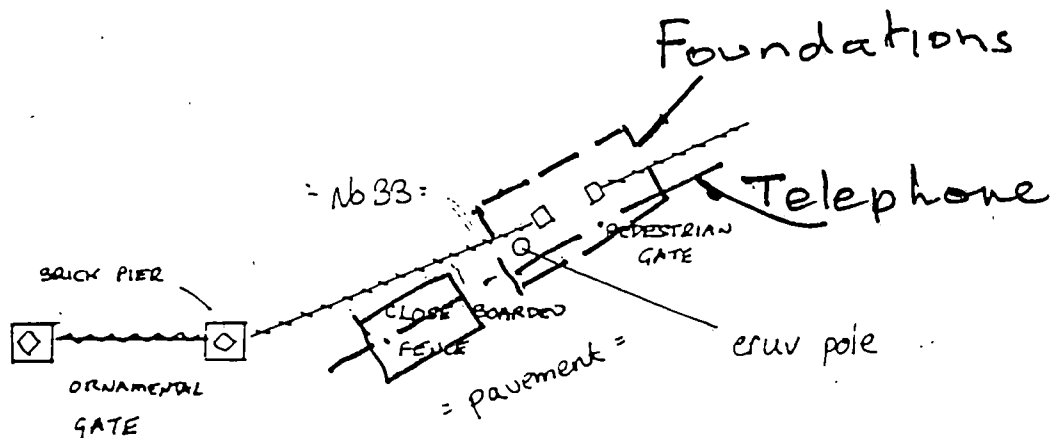


09 : WEST HEATH ROAD, NW3

AMENDMENT: JANUARY 1993

SCHEMATIC SHOWING LOCATION OF SOUTH POLE

AT REAR OF PAVEMENT, ADJACENT TO CLOSE-BOARDED FENCE WHICH FORMS THE FRONT-GARDEN BOUNDARY TO NO 33 WEST HEATH ROAD (THE LODGE) JUST SOUTH EAST OF THE PEDESTRIAN GATE.



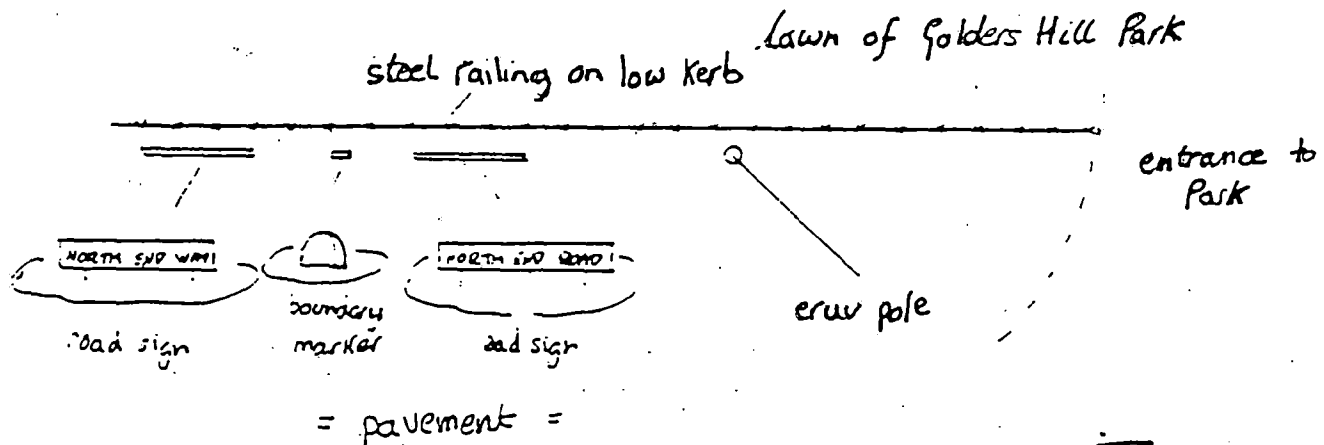
12 NORTH END WAY / ROAD NW11

AMENDMENT JANUARY 1993

SCHEMATIC SHOWING LOCATION OF SOUTH-WEST POLE

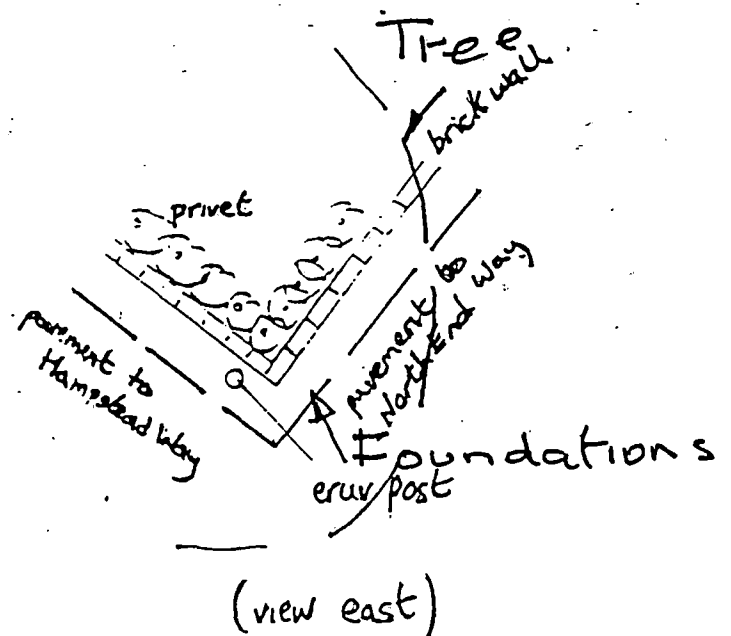
Location s
to & if not
provided.

AT REAR OF PAVEMENT, 1.5 M NORTH WEST OF
ROAD SIGN BEARING LEGEND "NORTH END ROAD"
ADJACENT TO PARKS PERIMETER STEEL FENCE.



21 NORTH EAST POLE

AT REAR OF PAVEMENT, c15cm
FROM BRICKWALL AND c15cm
FROM CORNER OF HAMPSHIRE
WAY AND NORTH END WAY.



13.

ALL ERUV POSTS SET AT REAR
OF PAVEMENT.

- lamp post on pavement
- telegraph pole on pavement

HAMPSHIRE HEATH EXTENSION

HAMPSHIRE, NEW H

1:1250

TQ 2687 SW

supplemental
post: Jan. '95

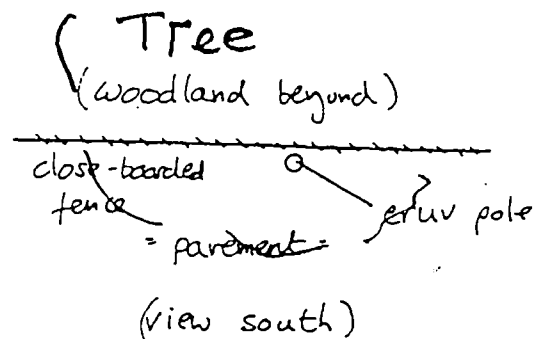
47

14: HAMPSHIRE LANE NB

SCHEMATIC SHOWING LOCATION OF POSTS

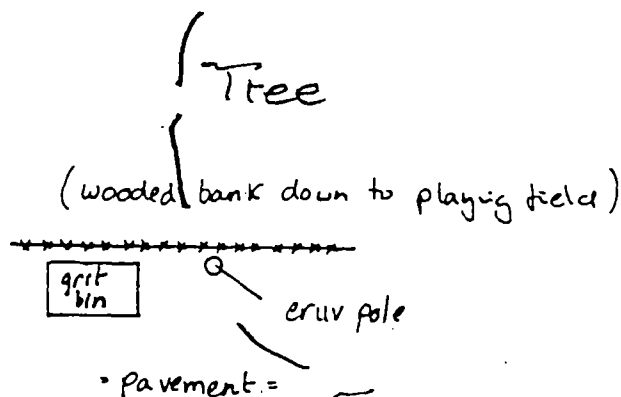
1/ SOUTH POLE

AT REAR OF PAVEMENT, 15cm FROM CLOSE
BOARDED FENCE WHICH BOUNDS "NORTH WOOD"



2/ NORTH POLE

AT REAR OF PAVEMENT, 15cm FROM
STEEL RAILINGS WHICH BOUND PLAYING
FIELDS, 0.5m WEST OF GRIT
BIN ON PAVEMENT.

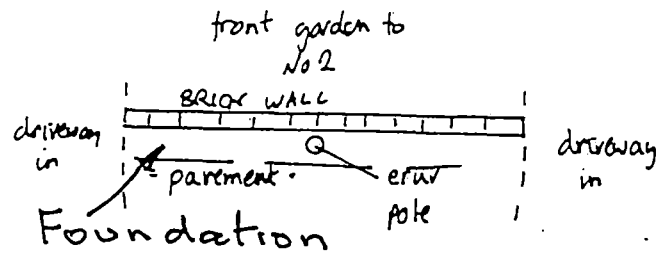


15: AYLMER ROAD, N2

SCHEMATIC SHOWING LOCATION OF POSTS

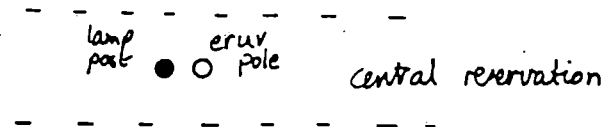
1/ NORTH POLE

AT REAR OF PAVEMENT, 15cm FROM FACE OF BRICK WALL WHICH FRONTS No 2, MIDWAY BETWEEN TWIN DRIVEWAY ENTRANCES



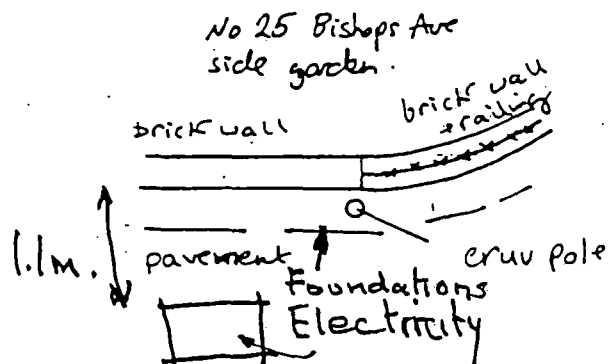
2/ CENTRAL POLE

ON CENTRAL RESERVATION, ADJACENT TO EXISTING LAMP-POST. COLINEAR WITH NORTH AND SOUTH POLE.



3/ SOUTH POLE

AT REAR OF PAVEMENT, 15cm FROM BRICK WALL WHICH FRONTS No 25 BISHOPS AVENUE.



n.b. for 15/1 and 15/3 there is a grass verge between the pavement and the carriageway.

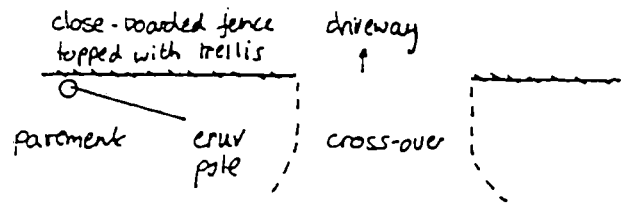
16: BANCROFT AVENUE, N2

SCHEMATIC SHOWING POSITION OF POSTS

(view south)

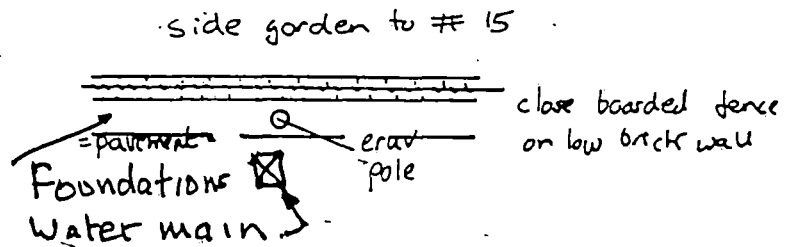
1/ SOUTH POST

AT REAR OF PAVEMENT, c. 15cm from
CLOSE BOARDED FENCE WHICH BOUNDS
"ESHER HOUSE", 4m SOUTH EAST
OF CROSS-OVER.



2/ NORTH POST

AT REAR OF PAVEMENT, c. 15cm from
LOW BRICK WALL AND CLOSE-BOARDED
FENCE WHICH BOUNDS 15 BISHOPS AVENUE.
PERPENDICULARLY OPPOSITE SOUTH POST



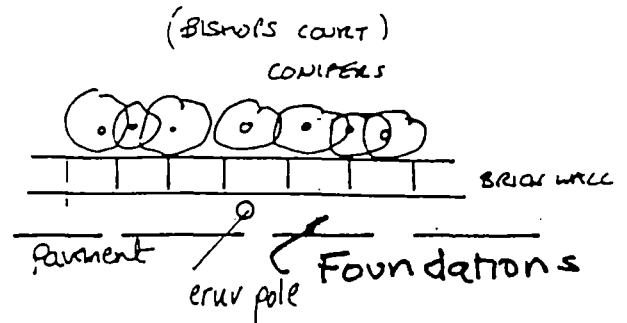
(view north)

17: CHERRY TREE HILL, N2

SCHEMATIC SHOWING LOCATION OF POSTS

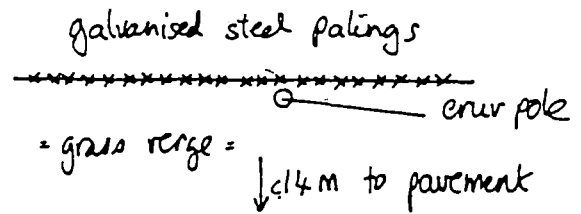
1) WEST POLE

AT REAR OF PAVEMENT, 15cm from
BRICK WALL WHICH FRONTS BISHOPS
COURT, APPROX 15 m EAST OF
CORNER WITH BISHOPS AVENUE..



2) EAST POLE

ADJACENT TO GALVANISED STEEL
PALINGS, AT REAR OF WIDE GRASS
VERGE; IN FRONT OF INDUSTRIAL
BUILDINGS



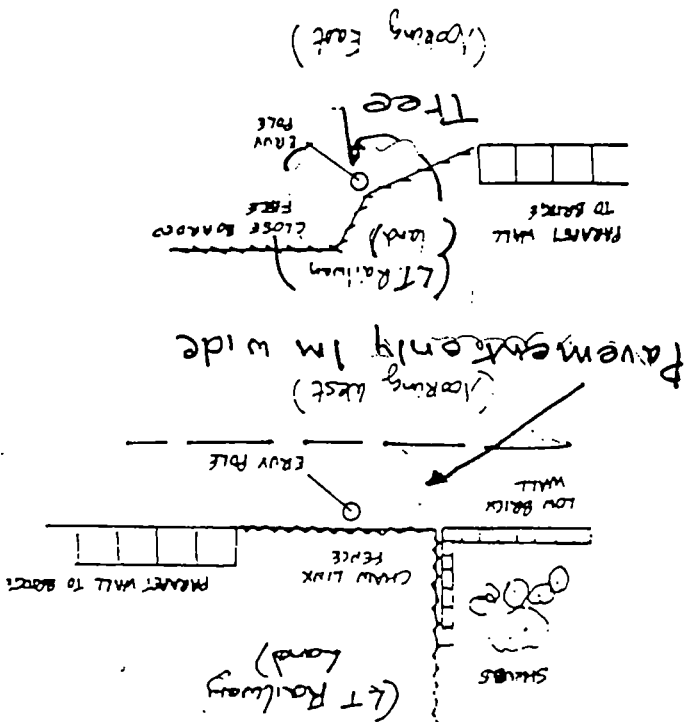
18A EAST EN RD N2
SCHEMATIC SHOWING LOCATION OF POLES

1/ WEST POLE

AT REAR OF PAVEMENT, 15cm FROM CHAIN LINK FENCE WHICH JOINS THE BRICK PARAPET OF THE BRIDGE TO THE LOW BRICK WALL SURROUNDING SHOULDER 1 m southwest of the PARAPET WALL

2/ EAST POLE

AT REAR OF PAVEMENT, 15 cm FROM CLOSE BONDED FENCE WHICH IT CHANGES DIRECTION, APPROX 1.5m SOUTH EAST OF PARAPET WALL

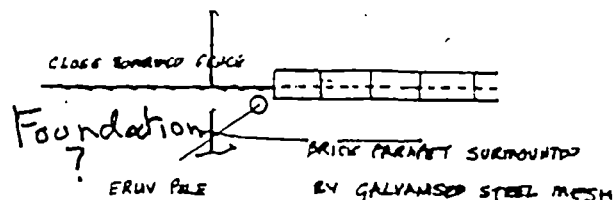


18B. PROSPECT PLACE N2

SCHEMATIC SHOWING LOCATION OF POLES

1/ WEST POLE

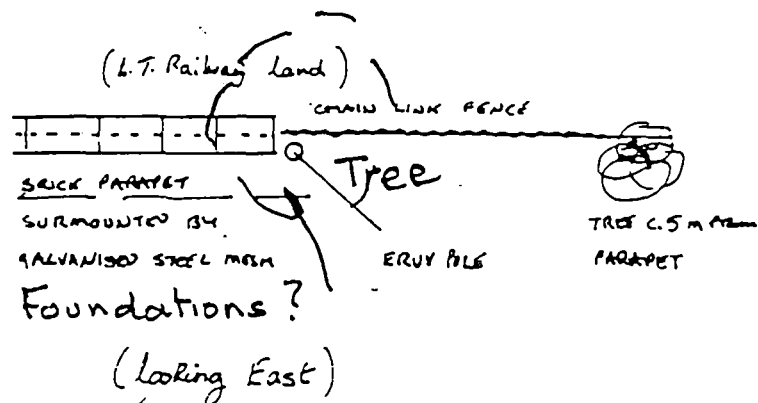
15cm SOUTH OF BRICK PARAPET WALL OF BRIDGE, IN FRONT OF CLOSE-BOARDED WOODEN FENCE WHICH IS THE REAR PERIMETER OF 1-17 OAKVIEW GARDENS. THE POLE IS SET AT THE REAR OF THE GRASS VERGE BEYOND THE PAVEMENT / FOOTPATH



(Looking West)

2/ EAST POLE

15cm SOUTH OF BRICK PARAPET WALL OF BRIDGE, IN FRONT OF CHAIN LINK FENCE WHICH IS THE PERIMETER OF THE L.T. RAILWAY LAND. THE POLE IS SET AT THE REAR OF THE GRASS VERGE BEYOND THE PAVEMENT / FOOTPATH



(Looking East)

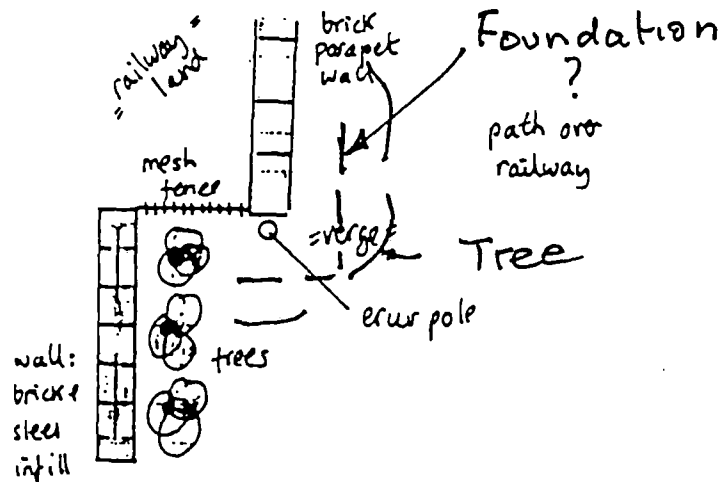
Next No 33 Stanley Rd
Page 93

33: STANLEY ROAD, N2

SCHEMATIC SHOWING LOCATION OF POLES

1/ NORTH-WEST POLE

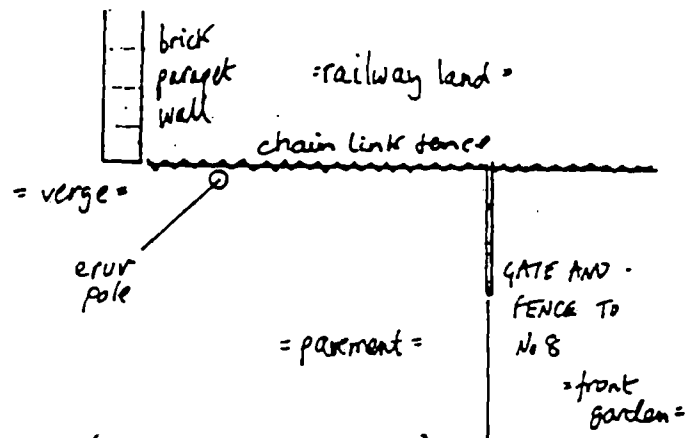
ADJACENT TO THE SOUTH WEST END OF THE BRICK PARAPET WALL (TO THE BRIDGE OVER THE RAILWAY), WITHIN 30cm OF THE WALL



(view looking North-West)

2/ SOUTH-EAST POLE

ADJACENT TO THE CHAIN LINK FENCE WHICH CONNECTS THE BRIDGE PARAPET WALL TO THE FRONT FENCE AND GATE OF NO. 8 STANLEY ROAD, 5m SOUTH EAST OF PARAPET



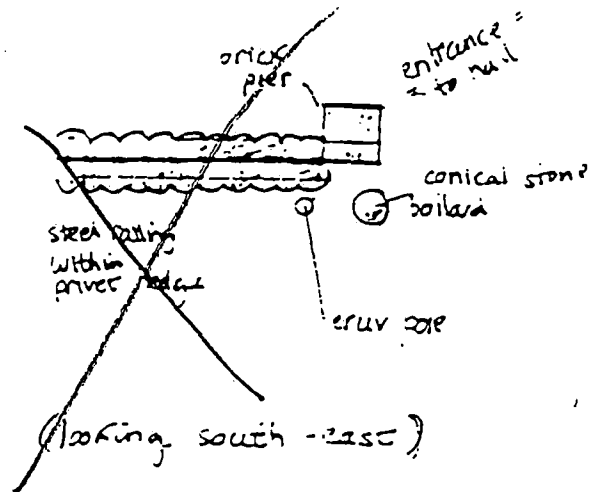
(looking North-East)

17. CHURCH LANE, N2

SCHEMATIC SHOWING LOCATION OF POLES

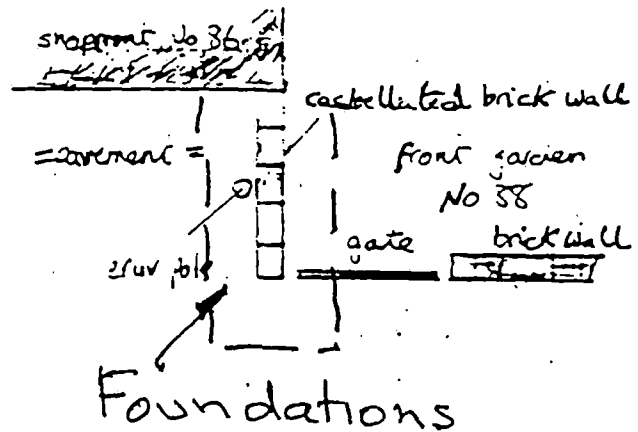
1 / NORTH-EAST POLE

TO THE NORTH OF THE CONICAL STONE BOLLARD WHICH IS SET IN FRONT OF THE BRICK PIER WHICH DEFINES THE NORTH SIDE OF THE ENTRANCE ROAD TO THE CHURCH HALL, ADJACENT TO THE HEDGE/STEEL RAILING. AT THE REAR OF THE PAVEMENT WITHIN 15CM OF FENCE AND 0.5m OF BOLLARD



2 / SOUTH WEST POLE

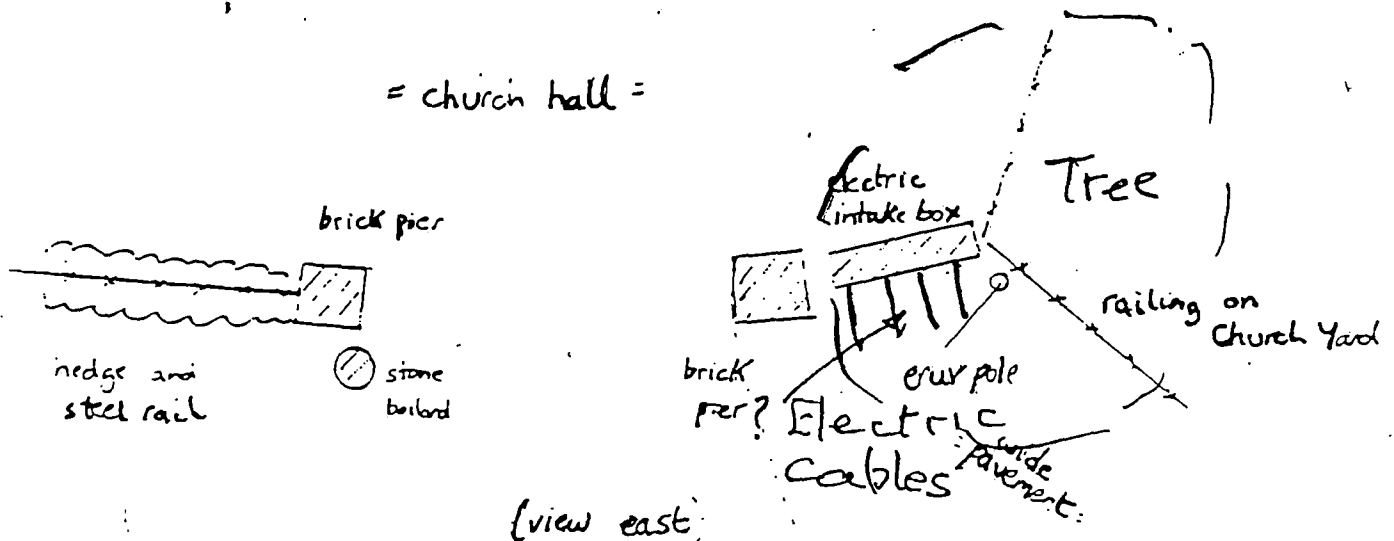
adjacent to low, castellated brick wall to the south west of the front garden of No 86. 15m from wall and 1m from front corner by gate.



19 : CHURCH LANE N2

AMENDMENT JANUARY 1993

SCHEMATIC SHOWING LOCATION OF NORTHEAST POLE



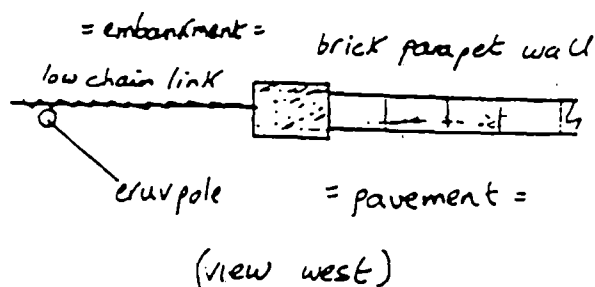
TO THE SOUTH OF THE SOUTH BRICK PIER OF THE ENTRANCEWAY TO THE CHURCH HALL ADJACENT TO THE ELECTRICAL WIRE BOX

20: NORTH CIRCULAR ROAD, N2

SCHEMATIC SHOWING LOCATION OF POSTS.

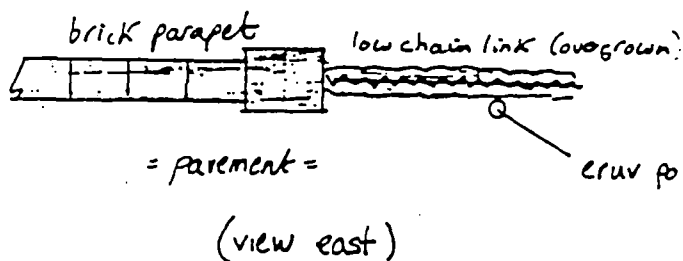
1/ WEST POLE

3m FROM PARAPET WALL OF BRIDGE OVER UNDERGROUND RAILWAY LINE, DIRECTLY ADJACENT TO CHAIN LINK FENCE AT VERY REAR OF PAVEMENT



2/ EAST POLE

3m SOUTH OF PARAPET WALL OF BRIDGE DIRECTLY ADJACENT TO CHAIN LINK FENCE (OVERGROWN WITH IVY ETC) AT VERY REAR OF PAVEMENT.



RECEIVED 0 9 NOV 1993

BARNET ERUV OBJECTORS GROUP

Please reply to:
52 Lyndale Avenue,
London, NW2 2QA

Fibbens Fox Associates,
31 The Broadway,
Woodford Green,
Essex
IG8 OHQ

8 November, 1993

Ref: GAM/1871/APAIA/MGO

Dear Sirs,

Town and Country Planning Act 1990
Appeals by The United Synagogue Eruv Committee
London Borough of Barnet

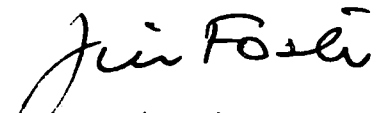
In accordance with the directions given by the Inspector on 28 September 1993 I enclose:

This Group's Statement of Case: document B.E.O.G./1

Witness Statements: B.E.O.G./2/1-19 and (separately)
B.E.O.G./2/20

As I have not yet received the detailed plan, nor certain essential additional information which the appellants were directed to provide, much of the accompanying documentation has had to be prepared on the basis of assumptions as to the structures and boundaries concerned, and I therefore request the Inspector's permission to file further relevant evidence at a later date if necessary.

Yours faithfully,


Jill Foster (Mrs)


Statement of Case on behalf of Barnet Eruv Objectors Group

Solicitor: Mrs J.A. Foster

Counsel: Mr Alistair McGregor

This Group strongly opposes the creation of a private Jewish domain demarcated by poles and wires intended to enclose 6.5 square miles of the London Borough of Barnet.

Reasons

1. Aesthetics

The Group fully endorses the reasons given by the local planning authority on 24th February 1993 in refusing planning permission and by the Public Works Committee in October 1993 in rejecting the amended application which is the subject of the second appeal, now to be considered at the same inquiry, commencing 30th November 1993. In short, the proposed structures would be unsightly and detrimental to the landscape.

2. Development Plan and Planning Policy

The proposal does not accord with the policies quoted in

the Local Planning Authority's Statement of Case, para 2.1, with Planning Policy Guidance Notes PPG1 and PPG12 or with certain other paragraphs of the Unitary Development Plan for Barnet, in addition to those cited by the local planning authority, namely T3.4, T5.1, T8, O5.2, E.1, M6.1 and M6.2.

3. Conservation Areas

The proposal would detract from an outstanding and extensive Conservation area, namely Hampstead Garden Suburb, also Hampstead Heath and Hampstead Heath Extension.

4. "Public benefit"

The proposal will not satisfy PPG12 which requires authorities to consider the likely impact on different groups in the population because:

- a) The total population of adult electors in the eruv area is around 81,000. The total of all those who attend the four United Synagogues is around 6,003 (7% of the population). Of these the appellants' group represents a minority, and the number of those who require the relaxation of their Sabbath laws because of personal hardship seems unlikely to exceed 100. (It is understood that in cases of real hardship rabbinical dispensation is available). PPG1 states

that only in exceptional circumstances are personal reasons material to an application.

- b) On the other hand there have been disturbing reactions in the forms of resentment, race-consciousness, and division within the Jewish community itself about the prospect of a fundamentalist minority group erecting prominent demarcation signs for its private purposes. The areas affected have hitherto been virtually free of social tensions.
- c) Private frontages - those who are expected to tolerate the poles and wires outside their houses, as well as those whose property boundaries are apparently to be incorporated as part on an "eruv" - regardless of their own religious persuasions - are deeply offended as are many of those (including Jews) who would be regarded as living within a Jewish domain.
- d) There is reason to anticipate the effect on population-mixture; in other words while some strictly observant Jews would wish to move to live within the "eruv", those who did not share their attitudes would prefer to live outside. No such pressures have hitherto existed in the affected areas. Residents have referred repeatedly to the unacceptability of inhabiting a ghetto.

- e) It is understood - by many observant Jews - that the theological basis which has been propounded is fallacious in many respects. Examples of other eruvs will be mentioned.
- f) To grant such an application would set a detrimental precedent.

5. Practicalities

- i) The proposals give no certainty as to the position of the "gateways" or the existing boundaries which are to be regarded as incorporated as part of the eruv perimeter.
- ii) Legal impossibility. It has been assumed that owners of the subsoil beneath highways, foundations of fences, or trees will give their consent to the physical use or alteration of these for the pupose of erecting the structures, whereas they are most unlikely to do so.

It has further been assumed that permission under various public Acts - principally the Highways Act - will be forthcoming even though several trunk roads are involved.

- iii) Construction problems. From the information available

it is evident that the foundations of some of the poles will involve interference with private structures, and that either the poles or the wires will involve contact, in many cases, with existing structures e.g. signboards, eaves, or with trees - either above or below ground. It is understood that the relevant religious laws prescribe that any branches interfering with eruv wires are detrimental to their intended effect and must be removed. It is quite unacceptable that this should occur. The trees in the area are all of benefit to a far greater number than those who wish to circumvent their Sabbath restrictions.

6. Risk of damage or injury

There is concern as to the safety of the wires: if they should snap they could cause a hazard - particularly to cyclists - or cause injury. If the 3mm wire were to be used, the same risks would apply and it would be obtrusive and therefore unacceptable on aesthetic grounds. If the 0.3mm wire were used, it would be a danger to birds by being virtually invisible. The poles are regarded as capable of being knocked over, thereby striking adjoining property or persons; and if rigid, and near to private property, an aid to burglars.

Evidence will be presented in support.

J. A. Foster
S. Shilton

B.G.O.6/2/20

PROOF OF EVIDENCE OF CECIL LUSH, FELLOW OF THE ROYAL INSTITUTE OF BRITISH ARCHITECTS OF HARMAN DRIVE, LONDON, NW2 TO BE PRESENTED AT THE PUBLIC INQUIRY SET FOR 30TH NOVEMBER, 1993 INTO AN APPEAL BY THE UNITED SYNAGOGUE ERUV COMMITTEE AGAINST THE REFUSAL BY THE LONDON BOROUGH OF BARNET OF PLANNING PERMISSION IN RESPECT OF THE ERECTION OF POLES AND WIRES.

DEPT. OF THE ENVIRONMENT REF: APP/N5090/A/93/224571

SUMMARY

FIRSTLY, I give evidence as expert.

In para. 1, I deal with my personal and professional background.

In para. 2, I report on the details arising from my inspection of all the locations of the gates and provide annotated plans where I envisage there will be physical difficulties

In para. 3, I deal with the impracticability of the proposed positioning of numerous poles and my doubts as to the safety of the construction of the gates.

In para. 4, I outline some of the environmental objections to the proposals.

SECONDLY, I give evidence as a local resident who objects to nearby gates.

THIRDLY, I give evidence as an Architect on behalf of the Frontager Mrs. Milina Popper of 2 Farm Avenue, NW2, Location No. 2.

DEPT. OF THE ENVIRONMENT REF: APP/N5090/A/93/224571. CECIL LUSH.

My Name is Cecil Lush, Fellow of the Royal Institute of British Architect of Harman Drive, London, NW2.

FIRSTLY, I give evidence as expert witness on behalf of a group of 34 residents represented by Mr Kossoff and on behalf of the Barnet Eruv Objectors Group.

1. BACKGROUND.

i). I was born in London in 1918 and came to live in Hendon in 1925 at the age of 7 and have lived here, apart from Army service, ever since. I was educated at schools in Barnet, Wessex Gardens Primary and Christs College, Finchley, Grammar School.

ii) In 1935 when I left Christs College, I was articled to Welch and Lander in Gloucester Place, London and attended night School at the School of Architecture, Regent Street Polytechnic. Herbert Welch was Consultant Architect to the Hampstead Garden Suburb Trust and the firm supervised the extensive estates of houses built in the Borough by A.J. Reynolds, Haymills, Roger Malcolm among others.

iii) In 1939 I joined the Royal Engineers and served for the next 6 1/2 years. I was in France in 1940 and in Burma from 1943 to 1946 and was all ranks from Sapper to Major commanding a Field Company.

iv). When I returned from the Army and completed my Architects training I set up in practice and during the following years I designed many Contracts in the Borough including 27 years as Architect to King Alfred School and the Barnet Overseas University Students Hostel in Woodside Park. The firm was Lush & Lester and for some years we acted as Architects for the United Synagogue and designed the first Mill Hill Synagogue, repaired Brondesbury Park Synagogue after it was damaged by arson and also designed the Newberry Park Synagogue.

v). I give this evidence upon the basis of the expertise aquired as a result of this background, comprising active and immediately relevant architectural and planning experience in the Borough going back to 1935. This, as you will see, includes the designing and building of three synagogues on behalf of the Unifed Synagogue. As you might suppose, this involved the consideration of a number of aspects of Jewish religious laws and practice and the incorporation of these precepts into the detailing and structures of several buildings.

vi). I should also perhaps point out that in 1935 I worked on the Hendon Methodist Church which is just opposite this Town Hall.

ix). For the last 42 years I have lived in Harman Drive in the south west corner of the Borough. I retired five years ago.

x). From this personal and professional background I have aquired an extensive and perhaps unique experience and knowledge of many of the relevant issues raised by this Appeal.

2. PROPOSED POLES AND WIRES.

i). I have examined the Report provided by the Controller of Development Services of the London Borough of Barnet dated 24th February 1993 as amended. I have visited 22 sites of the proposed gates and have marked on the plans where there are obvious foundations of walls, water mains, telephone cable etc. that could be damaged by the proposed works. These 22 plans with my notes are attached to this evidence.

ii). There are three sizes of poles proposed:

6.5 metres high by 116 mm. diam.	(20 feet by 4 1/2 inches)
5.5 metres high by 76 mm. diam.	(17 feet by 3 inches)
3.5 metres high by 76 mm. diam.	(10.5 ft by 3 inches)

There are 38 locations with 85 posts and in 15 locations the posts are to be painted with anti-vandalism paint. The poles are to be painted green or grey.

iii). In one application the wire is to be 3mm in width, in the second it is to be 0.3mm, one tenth the previous diameter. The total length of wire given is 942 meters, the maximum span 41 meters. (Gate 24A). No loading strength has been given for either wire.

3. METHOD OF ERECTION

i). No information is given as to the method to be employed to plant these poles. Is it to be by mechanically drilling a hole or by excavation? Is there to be a concrete base in which to plant the pole? If so what size? This information is fundamental. The normal and safe procedure for planting such poles would be to set them in concrete and to be effective it should be a cube of up to one meter, set below the pavement with the pole planted in the centre which would mean it is 500mm. or 1' 8" from the wall. If the pole is planted as shown 150mm or 6" from the wall then the foundation becomes ineffective with the pole so much to one side. A mass concrete foundation of this size could affect the foundations of the building against which it is set.

ii). The poles are noted as being 15cm. (150 mm.) or 6" from the face of the wall of the building. I would point out that all walls have foundations and at about 600mm or 2 feet below ground or pavement level the foundations of the wall will project out from the wall face about 460mm. or 1' 6". Therefore to plant a pole 150mm or 6" from the face of the wall the foundations would have to be pierced. This would require consent of the Freeholder, Leaseholder and Occupiers of the building concerned. A careful Surveyor before permitting the works to be carried out would require a Schedule of Condition of the building to be prepared and agreed and checked before and after the works.

iii). The pavements in Barnet are crowded with gas mains, water mains, soil drains, surface water drains, electricity mains of high voltage and standard voltage, telephone and cable television cables. There is a strong possibility of damage being done to any one of these. As previously stated, I have inspected the sites and noted the services that are visible and could be damaged and the foundations that could be affected

iv). Taking into account these facts and that it is clear from the Report that most of the relevant Frontagers are opposed to the posts, then it is obvious that without their consent the posts as shewn are

entirely impractical as the active consent of the frontagers would be required.

v). On the basis of allowing for a concrete foundation of approximately a cubic metre, (a reasonable and safe method of construction) and allowing for the foundations of an existing wall protruding about about 1/2 metre or 1' 8", unless the Frontagers consent, the post would have to be planted about a metre or 3 feet from the wall face or more relevantly in the middle of the pavement.

vi). By way of example, if you refer to Location 07, Devonshire Place, NW2, the North Post is shewn on the corner of a building. The building was completed in 1992, on this corner there is a circular reinforced concrete column supporting a multi storey building over. There must be a concrete foundation projecting perhaps nearly two meters and with solid concrete to pavement level. If the post is planted beyond this it will be in the middle of the road and would not last long with the vehicles turning into the service road and garages immediately behind.

vii). I am further extremely concerned about the safety of these structures. In order to overcome the difficulties I have outlined there is likely to be a tendency to skim on the foundation work and the cubic contents of the concrete in the foundations.

viii). If a hole has been drilled into the ground and a pole just dropped in without a foundation, it is easy to lift it out.

ix). You will find that if you take hold of a modern lamp post it is quite easy to shake it with a whipping effect at the top. Would the proposed thinner wire be strong enough? Has a gate been set up and tested and have the results been published?

x). I have noted on the plans of the 22 sites I have inspected where the poles are set within the curtilage of a tree. This would expose the wire to damage from falling branches and of branches rubbing against the wire. Also trees could be damaged when the poles are erected or maintenance is carried out.

4. ENVIRONMENT.

i). The design of street furniture in Barnet and generally throughout the United Kingdom is very high. The designs are directly related to a particular function and in both the design and location of each item the highest priority is given to the convenience and safety of the using public. These objects therefore have aesthetic merits and such objects as telephone boxes, street lamps and pillar boxes have become "architectural antiquities" to be refurbished and cherished.

ii). The proposed gate structures on the other hand are not designed or located according to some functional precepts. They are symbolic structures designed and located in accordance with religious precepts derived by way of ancient interpretations of religious law. As such they must always be unacceptably "obtrusive" to the street scene in relation to which they are inappropriate.

iii). I must point out that even with the best designed "street furniture" there is a problem of maintenance. Lamp posts and bollards are often bent over or knocked down. Post boxes and telephone boxes are often vandalized and remain unpainted. Graffiti and fly advertising are commonplace despite the efforts of the Authorities to maintain the well designed street furniture.

iv). Reference has been made to the fact that there are telegraph poles so what difference will another 85 poles make. I have always understood that the Planners in the Borough were against additional street furniture. Some of the housing estates were built in the Borough in the early part of this century when the telephone was not considered to be a service required domestically. As conditions changed in the 1920's and 1930's and telephones were required, rather than dig up established gardens and paths, overhead wires were permitted but few if any since the 1940's. Also much has been done to get rid of them wherever possible. The recent installation of Cable Television was not permitted to run cable above ground.

v). Unfortunately we must face up to the fact that vandalism goes with anti-Semitism and I can see these poles and wires becoming regular objects of attack with consequent danger to the general public. There will also be the danger and the nuisance in the obstruction of footpaths and roads when maintenance has to be carried out.

vi). In view of the above it is clear to me that insufficient consideration has been given to the practical problems that would follow the installation of the Eruv posts and wires.

I give these examples:

- a. The Council Officers gave their approval to these poles without seeing any erected, even painted olive green.. They call for many of the poles to be painted with anti-vandal paint to stop access to adjoining premises. This paint is sticky, picks up dirt and dust and will assist the fly posters in their overnight work. The paint has to be renewed regularly with consequent danger to the public.
- b. Has consideration been given to the possibility of a whistling noise from the wind on the wire?
- c. I believe that these gates being symbolic objects inappropriate to the street scene will in some cases provide a visual distraction which could prove dangerous.
- d. The gate at Location 12 illustrates these points.
The gate is on North End Road at its junction with Hampstead Way, a main commuter road into and out of the Borough from central London. It will be a high profile gateway to the Jewish Eruv Area. The Posts are outside Golders Hill Park and will be visible to any one entering or leaving. The posts are near two public houses, one the Bull and Bush and these are crowded especially on the weekend. I would hate to think what would happen if these gates were damaged at say 3.30 on a Friday afternoon. The Eruv emergency squad would be called out, the commuter traffic would be very heavy and in addition there would be all the cars of the parents collecting the children from King Alfred School just down North End Road. The traffic chaos would be immense and every Jew in Britain would be blamed.

These are the material considerations upon which I urge refusal of the Appeal.

SECONDLY, I give evidence on my own behalf as one who has been living in Harman Drive for 42 years.

1. Harman Drive is a cul-de-sac off Farm Avenue. Unless I want to go south into Central London, I have to go along Farm Avenue or onto Hendon Way north bound. I will therefore have to pass under either Gateway 02 or Gateway 03 and enter into the Barnet Ghetto.

2. It is my opinion, these poles and the delineation of a boundary for one group, be it ethnic or religious, is against everything that democracy stands for in Great Britain. Barnet has every race and religion living in its area and so far they have lived together in comparative peace. Why be divisive now? Surely we have enough examples of the tragedies of Northern Ireland, Europe in the 1930's and 1940's and now Jugoslavia.

3. I would ask for the refusal of the Appeal.

4. I enclose a copy of my letter to the Planning Officer, London Borough of Barnet dated 3rd September, 1992

THIRDLY, I give evidence on behalf of Mrs. Milina Popper the owner and occupier of No. 2 Farm Avenue, NW2, a Frontager of Location No.02 Farm Avenue near its junction with Cricklewood Lane, and to let her objections be known.

1. On 19th December, 1992 Mr. & Mrs. Popper wrote the following letter to the Director of Technical Services at the London Borough of Barnet.

"We are in receipt of your letter dated 16th December 1992 together with the plans shewing the above proposals immediately outside our house.

We are writing to object to the scheme for an Eruv for the following reasons.

1. As Jews we consider the whole idea is a scheme to circumvent the Laws of orthodox Judaism.
2. We both came to England as refugees from Hitler's Europe, arriving here one before and one after the war.
3. If the posts and wires as proposed are erected, every time we look out of our living room or bedroom window or leave the house, we will be faced with this reminder of concentration camp posts and wires and the division of areas for Jews and non-Jews.
4. After the War, there remained from both our families only one sister who survived Auschwitz. She subsequently had years of treatment and we hate to think what her reaction would be when she visits us and is confronted with these poles and wires.

We are both horrified at this whole scheme and ask you please to see that permission is refused.

Yours sincerely, Milina and Frank Popper.

2. Mr. Popper has since died but on 22nd October 1993 Mrs. Popper confirmed her instructions to me.

3. I enclose a copy of Mr. & Mrs. Popper's letter dated 19th December 1992 to the Director of Technical Services of the London Borough of Barnet.

4. For the above reasons I would again ask for the Appeal not to be allowed.

4, HARMAN DRIVE, LONDON, NW2 2EB
3rd September 1992

081 452 1798

The Chief Planning Officer,
The Planning Department,
London Borough Of Barnet,
7th Floor Barnet House,
1255, High Road,
Whetstone N20 0EJ

Dear Sir,

Planning Application for Proposed ERUV.

With regard to the Notice published in the Hampstead & Highgate Express, I write to register my objection to the proposal.

I have lived in this Borough for nearly seventy years. I have practised Architecture in the Borough and in Britain for over sixty years. I can see no reason to permit additional street furniture for this purpose. I can also see no reason why part of the Borough should be delineated for the purpose proposed.

I trust my objections will be taken into consideration when the matter is discussed by the Council.

Yours faithfully,

Cecil Lush, F.R.I.B.A.

452-2028

2, FARM AVENUE
LONDON, N.W.2 2DY

The Director of Technical Services,
London Borough of Barnet,
Planning Group,
Barnet House,
1255 High Road,
Whetstone,
London N20 0EJ.

Your Ref: P/DM/ERUV 1/A

19th December, 1992.

Dear Sir,

Town & Country Planning Act, 1990,
2, Farm Avenue, NW2 2DY

We are in receipt of your letter dated 16.12.92
together with the plans shewing the above proposals
immediately outside our house.

We are writing to object to the scheme for an ERUV
for the following reasons.

1. As Jews we consider that the whole idea is a
scheme to circumvent the laws of orthodox Judaism.
2. We both came to England as refugees from
Hitlers Europe, arriving here one before and one
after the war.
3. If the posts and wires as proposed are erected,
every time we look out of our living room or
bedroom window or leave the house, we will be
faced with this reminder of concentration camps
posts and wire and the division of areas for Jews
and non-Jews.
4. After the War there remained from both our
families only one sister who survived Auschwitz. She
subsequently had years of treatment and we hate to
think what her reaction would be when she visits
us and is confronted with these poles and wires.

We are both horrified at this whole scheme and ask
you please to see that permission is refused.

Yours sincerely,

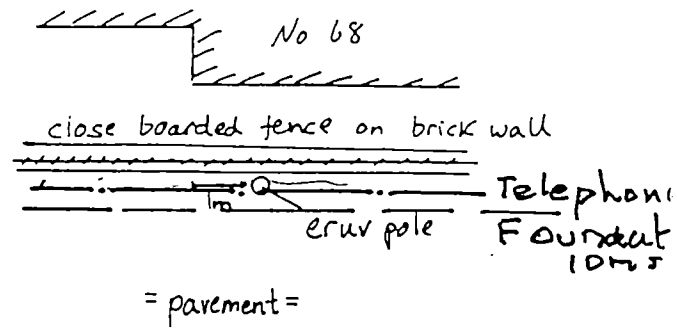
Milina and Frank Popper.

01: LICHFIELD ROAD, NW2

SCHEMATIC SHOWING POSITION OF POSTS

1/ SOUTH WEST POLE

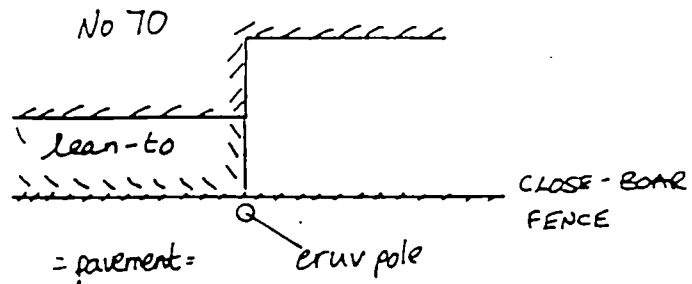
AT REAR OF PAVEMENT, c 15cm
FROM CLOSE-BOARDED FENCE
WHICH IS PERIMETER OF REAR &
SIDE GARDEN TO 68 CRICKLEWOOD
LANE, 1m NORTHWEST OF
REAR FLANK WALL OF MAIN HOUSE,



(view south west)

2/ NORTH EAST POLE

AT REAR OF PAVEMENT, c 15cm
FROM CLOSE-BOARDED FENCE
WHICH IS PERIMETER OF SIDE &
REAR GARDEN TO No 70 CRICKLEWOOD
LANE. IN LINE WITH THE SOUTH
EAST END OF THE WOODEN LEAN-TO
AT THE SIDE OF THE HOUSE



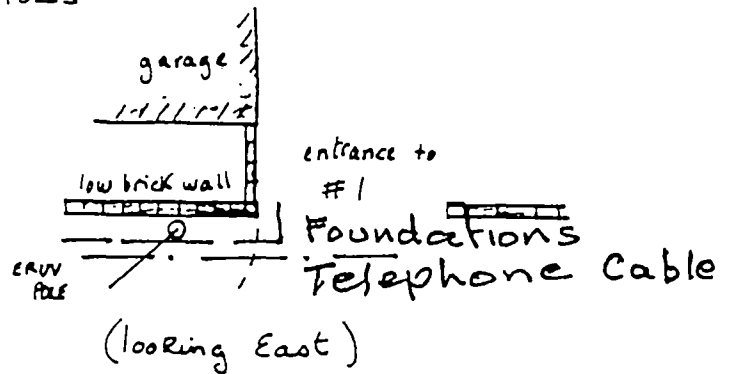
(view north east)

02 : FARM AVENUE NW2

SCHEMATIC SHOWING LOCATION OF POLES

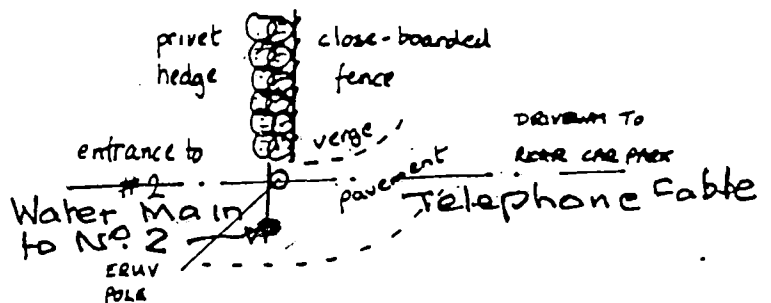
1/ WEST POLE

AT REAR OF PAVEMENT, c 1m
FROM CORNER OF LOW BRICK
WALL WHICH ADJOWNS FLANK
WALL OF No 1's DRIVEWAY.



2/ EAST POLE

AT REAR OF PAVEMENT,
DIRECTLY AT THE END
OF THE PRIVET HEDGE
WHICH FORMS THE
NORTHERN PERIMETER OF
2, FARM AVE.

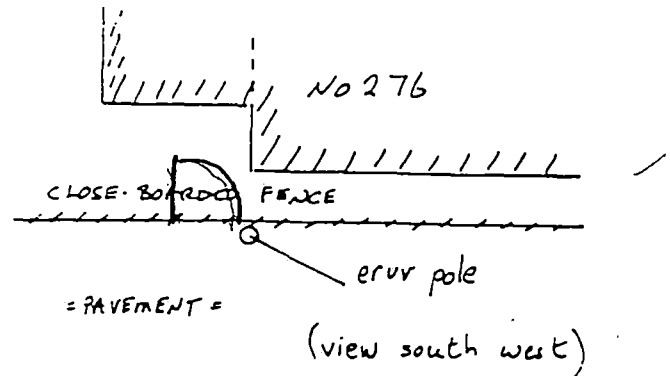


03. HENDON WAY, NW2

SCHEMATIC SHOWING LOCATION OF POSTS

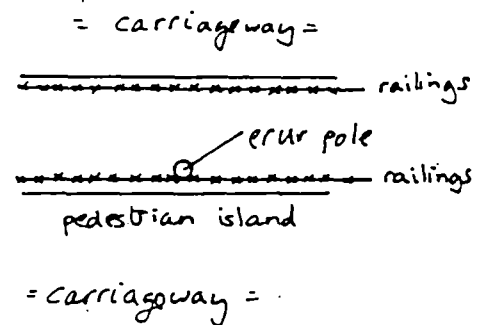
1/ SOUTH WEST POLE

WITHIN 15cm OF THE CLOSE-BOARDED FENCE WHICH FORMS THE PERIMETER OF THE GARDEN TO No. 276 CRICKLEWOOD LANE IN LINE WITH THE REAR WALL OF THE HOUSE (excluding THE SINGLE STOREY PROJECTION).



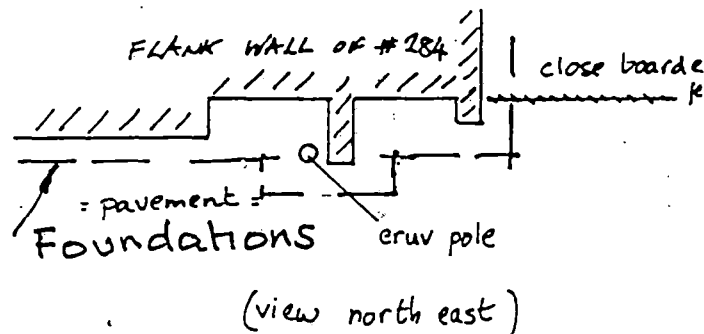
2/ CENTRAL RESERVATION POLE

THE CENTRAL RESERVATION COMPRISES A PEDESTRIAN ISLAND BETWEEN TWO RAILINGS. THE POLE WILL BE ADJACENT TO ONE RAIL WITHIN THE PEDESTRIAN ENCLOSURE.



3/ NORTH EAST POLE

AT REAR OF PAVEMENT, ADJACENT (2.15m) FLANK WALL OF 284 CRICKLEWOOD LANE, BESIDES MAIN BRICK ABUTMENT AT REAR OF HOUSE.



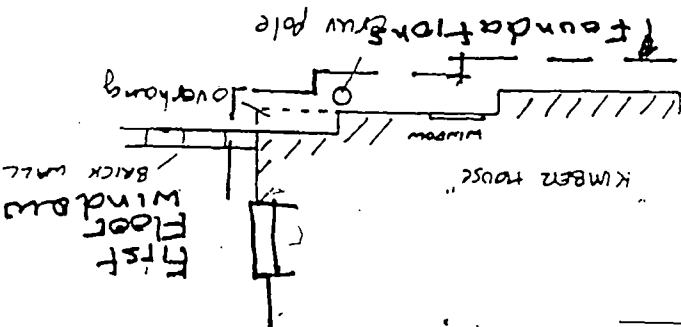
Next Location 32
Page 91 Childs Hill
Walk NW2

- 04 LYNDALE AVENUE NW2

SCHEMATIC SHOWING LOCATION OF POSTS

1/ EAST POLE

AT REAR OF PAVEMENT, 15m from FLANK WALL OF "KIMBERG HOUSE", c 15m from FRONT ELEVATION ON CRICKLEWOOD LANE AT THE EDGE OF THE OVERHANGING SUBFLOOR FOR THE SECOND FLOOR.

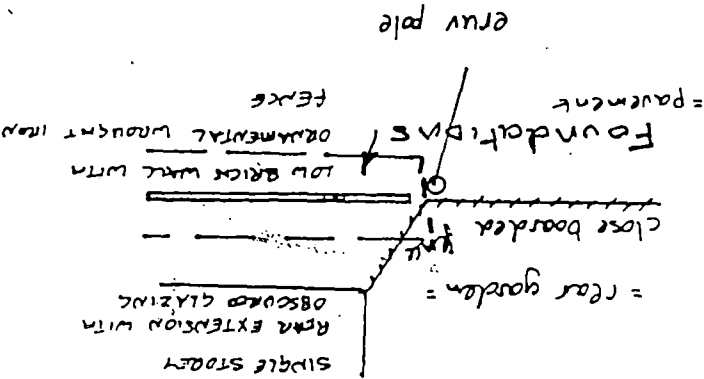


(view north east)

= pavement

2/ WEST POLE

AT REAR OF PAVEMENT, 15m from CLOSE BORDERED FENCE TO THE REAR GARDEN OF 308 CRICKLEWOOD LANE c 20m from front ELEVATION



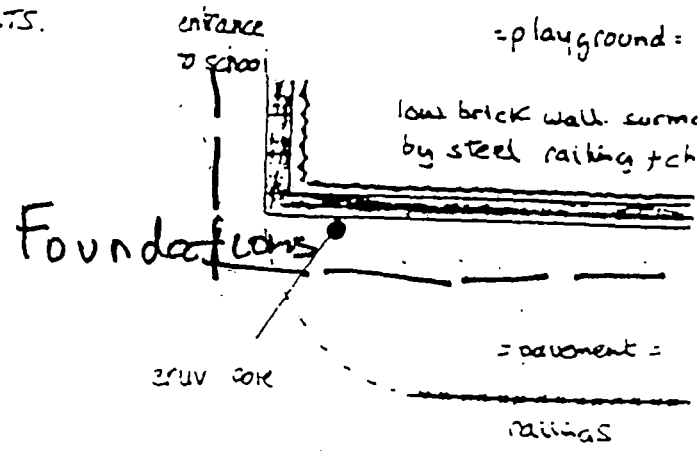
(view south west)

32: CHILDS HILL WALK., NW2

SCHEMATIC SHOWING LOCATION OF POSTS.

1/ WEST POLE

adjacent to exterior perimeter fence
of school, at very rear of pavement
0.5m south west of corner of
driveway into school.

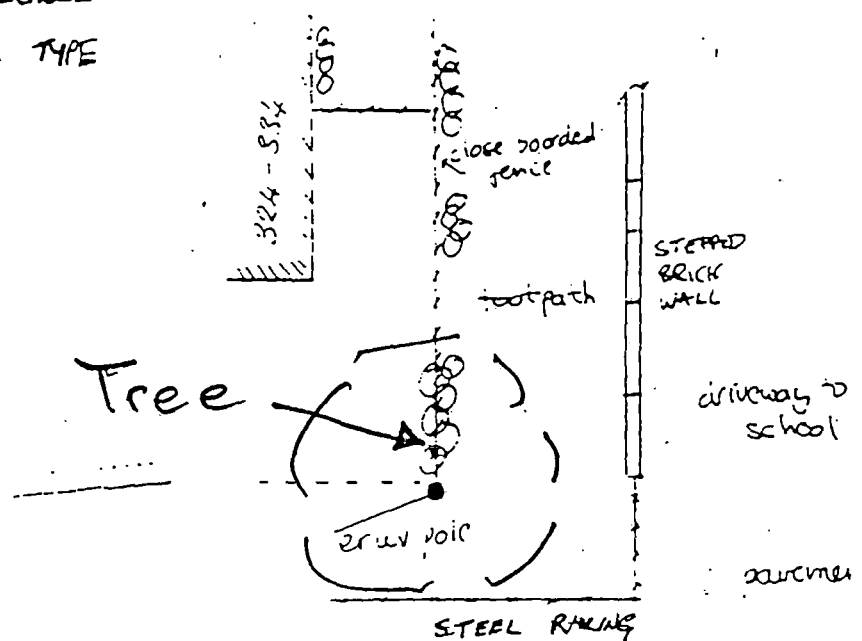


32 CHILDS HILL WALK NW2

AMENDMENT JANUARY 1993

EAST POLE MOVED NORTHWARDS TO BOUNDARY OF PAVEMENT
SO THAT THE WIRE RUNS PARALLEL TO THE PAVEMENT AND
AVOIDS OVER-RUNNING THE ENTRANCE TO ALL SAINTS C of E SCHOOL.

TO AVOID PROBLEMS WITH TALL DELIVERY
VEHICLES ENTERING ALL SAINTS SCHOOL
BOTH POSTS SHOULD BE MEDIUM TYPE



BE.0G/2/21

The Rev Lord Soper, former President of the Methodist Conference, will say:

- I have lived in Hampstead Garden Suburb for 40 years.
- I am opposed to the proposed erru delineated by posts and wires, both on theological grounds and as a long established resident in the area.
- I am unfortunately all too well acquainted with divisions, in the sense of factions, within religious organisation. This is an aspect of such division, rather than a process of cooperation.
- There is a precept common to many religions: "Love thy neighbour". This proposal demonstrates the opposite, provoking and advertising religious differences which ought to be overcome with mutual understanding.
- The people who are complaining about hardship could apply for dispensation. There are always exceptions to rules in the Jewish and Christian faiths. The rules are there to be interpreted not legally but charitably.
- Having been resident here for 40 years I have welcomed opportunities for collaboration, reconciliation and friendship. I deplore this expression of divisiveness where there should be cooperation. This is the kind of behaviour which has tended to lead to the creation of ghettos. There seems to be no sense in certain Jews now adopting behaviour which would lead to their voluntarily creating a ghetto for themselves.

- The essence of this matter is that it could become an unnecessary provocation, not a solution to a perceived hardship.

- As to the interpretation of the rules, over and over again religion has had to be buttressed by observances intended to hold together those who profess the same faith. They have never been intended to take the place of, or be interpreted as, the basic truths. They are limited to existing circumstances and when circumstances change the changes should be accompanied by adaptation of the rules, or adapted interpretations of those circumstantial provisions.

An illustration of this would be many rules relating to food.

- In my own faith of Christianity, and in Judaism, the greatest enemy of true religion is authoritarianism as frequently represented by its leaders. This is an example of the easy road to acceptance, rather than of loving God with your mind rather than merely by your actions.

- Religion is a fulfilment of the meaning and purpose of life here and now. It can only be real and dynamic if it is a genuine interpretation of that principle. Such genuine-ness can never leave out the responsibility of the individual to make up his own mind rather than accept the ecclesiastical fascism which has stained our contemporary civilisation so terribly.

- There is an element of arrogance in emphasising your own beliefs in an atmosphere which does not assist the well-being of the community: this is a hindrance to the fulfilment intended by religious belief.

- The idea that a selection of, or demarcation of, one's environment can enable those who inhabit that area to live as if they are independent of the larger area outside is a manifest failure in practice and a moral ghetto in thought. The

world has become the size of a neighbourhood, and only making it have the quality of a neighbourhood will conduce to the general welfare.

- For Christian, and indeed any religious belief worth its name, the Kingdom of God must come first in loyalty, and that means "sharing" rather than "keeping". We keep ultimately the social law by sharing its benefits and responsibilities. Any attempt towards isolation today is a fallacy and a menace.

- As I understand - and respect - the Jewish faith (from which Christianity emerged), it is the spirit which gives life and the letter of the law which impedes. Conscience needs fresh air to breathe or it stifles itself: there is no avoiding winds of change.

- I believe that the coming together of religious people is an emancipating experience for all of us, and therefore I must regard this particular measure as just as unacceptable to the Jewish faith as to the Christian.

- As to the idea of eruvs and their purpose - the whole concept is a retrograde step, looking to a world in which we can be separate and have a right to a private domain rather than a community.

It is understandable but regrettable: an attempt to find a way out of a dilemma by an attitude of self-satisfaction. It is never good religious observance to maintain the letter of the law in circumstances which make it inherently hostile to the well-being of the wider community.

Every rule that applies to a human group which accepts a religion must not seek to apply that religion in the interests of its privacy so as to affect adversely the well-being of the wider environment: this proposal is ultimately unacceptable on those grounds, a piece of impertinence, and must be resisted.

- There is inevitably an element of casuistry: it is ultimately a casuistical argument which takes the place of a moral precept. Finally I find this proposal unworthy of the true interests of both Christianity and Judaism: it is a trivialisation of a serious issue.

Ref was to Steele 24/11/93

① Briefing note
of where
Surr came from
why wired?

Why not declared
by reason of map
briefing note to be
handed in

+ private shopping

note
append Indonesia entry

~~FAX~~
~~h.o.d.~~
~~Boston~~
~~letter~~

② map

canal
road

motorway

ports

colour

+ Availability
of witnesses

List of ~~persons~~ ^{where} appearances
of behalf of Appellant
and list of Appellate Documentation

B.E.O.G/2/22



House of Lords

Far End, Wyldes Close, London NW11 7JB

I, Lord McGregor of Durris, Chairman of the Press Complaints Commission, Chairman of the Reuter Trustees and of Reuters Founders Share Company, Professor of Social Institutions in the University of London, 1964-1985, Joint Director of the Rowntree Legal Research Unit, 1964-1984 and Chairman of the Hampstead Garden Suburb Trust from 1991-1992, make the following statement of my strong opposition to the proposal to establish an Eruv in the Borough of Barnet that will involve, *inter alia*, the erection of six posts, described by the United Synagogue as "short telegraph poles", between Wyldes Close and Wildwood Rise. I have lived in Wyldes Close since 1952. In my opinion, the proposal is wrong in principle and carries the risk of dangerous consequences in practice.

Britain has for long maintained and defended religious toleration; the experience of other countries demonstrates how easily this may be destroyed. One of the essential bases of toleration is that no organised denomination should behave in such a manner as to affront others. This principle will be undermined by the present proposal to impose upon Barnet, including the Garden Suburb, an outstanding conservation area, the visible, and potentially unsightly, physical trappings desired by a small minority to facilitate their obedience to one particular religious belief. The United Synagogue shows arrogance in proposing to make ritual observances more convenient for its members by damaging the appearance of the Heath.

The acceptance by the planning authority of such a proposal would introduce religious considerations into planning procedures and must result in establishing a precedent that may be used in the future by members of other organised denominations and groups. If the erection of "short telegraph poles" on public land on the edge of Hampstead Heath be permitted, it is hard to see on what grounds a subsequent proposal for the erection elsewhere on the Heath of some other symbolic artefacts, could be resisted.

I am very concerned about the practical consequences of this development. There has been no road sign for Wyldes Close for a very long time because, whenever one has been erected, vandals have removed it. Indeed, cars parked in Wildwood Road alongside the part of the Heath which will bear the "short telegraph poles" regularly have their windows smashed by hooligans. Inevitably, the "short telegraph poles" will attract vandals the more especially as they will be regarded as symbols of one particular religious faith. I fear that such poles between Wyldes Close and Wildwood Rise may excite exhibitions of anti-semitism.

I cannot understand why the practice of Jewish religious discipline traditionally sustained for the best part of a century should now require these additional physical aids.

**TOWN AND COUNTRY PLANNING ACT 1990
APPEAL BY UNITED SYNAGOGUE ERUV COMMITTEE
SITE AT VARIOUS LOCATIONS WITHIN BARNET**

I am a resident of Barnet and of Hampstead Garden Suburb where I have now lived for thirty years. I believe that the appeal by the United Synagogue Eruv Committee should be rejected for reasons which I state below.

1. I do not need to repeat arguments already put on behalf of Barnet and with which I agree regarding the effect of this proposal on the environment. I do wish, however, to emphasise one point. *Any* proposal for an addition to street furniture should be critically examined. Additional street furniture intended to serve the interests of the great majority of local residents may, reluctantly, have to be accepted. Additional street furniture intended to serve the needs only of a small minority should have to pass a very high level of proof. This proposal comes nowhere near satisfying that level of proof. I do not accept the argument that there is already so much street furniture that a bit more is acceptable or will pass unnoticed. I do not accept it first because this proposed addition, due to its curiosity, will certainly be noticed; secondly, because of the effect of all street furniture on the environment; thirdly, because street furniture can become a hazard, for example if it is on the pavement it can become a hazard to pedestrians; and, fourthly, because of the risk that one successful application of this kind will lead to others which may be able to claim equal or better justification.

2. People entering the eruv area will be at once aware of the fact that they are entering a specially defined area. Poles and wires cannot be made inconspicuous. The nature of the community in which Barnet residents now live will be changed by giving the area a particular religious significance.

3. Hampstead Garden Suburb is a conservation area. The poles and wires necessary to enclose the eruv will not improve the character and quality of Hampstead Garden Suburb conservation area and, by definition, they will not maintain it. They will, in fact, detract from the environment of the conservation area.

4. Although this is a planning enquiry it seems to me relevant to consider not just technical planning questions but the effect of the creation of the eruv on the life of the local community. It will cause friction. The manner in which the campaign for an eruv has been conducted by the proposers has been illiberal and has already aroused opposition not least within the Jewish community. One religious leader in the area has accused opponents of the eruv of anti-Semitism thus causing intense anger among people who are only exercising their civic right to oppose a proposal of which they strongly disapprove. Lord McGregor of Durris was subjected to vilification because of the correct attitude which he took and, as a result, he resigned the chairmanship of Hampstead Garden Suburb Trust.

5. *Need*

a) At the pre-inquiry, the Inspector said that he will carefully examine the question of need. I hope he will take the view that, if a group of people adopt a particular view of the

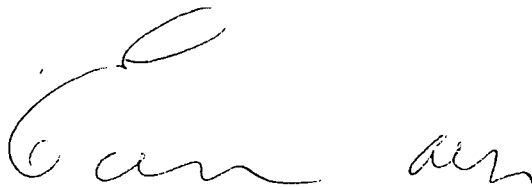
requirements of their religion, that does not create a need to reorganise the outside world to make it more comfortable for them in the fulfilment of those requirements.

b) If the Inspector looks at the question of need from other points of view, I hope he will take account of the following considerations. It has been claimed that this proposal will be of benefit to a very large number of people. This is a matter which the Inspector is best equipped to establish by questioning the evidence on which the claim of need is based. Jews have lived in this country for some centuries. It has never previously been represented that without an eruv the proper exercise of the Jewish faith places unacceptable burdens on believers. In any event if people believe that the pushing of prams and wheelchairs, or the carrying of handkerchiefs, on the Sabbath, is inconsistent with their faith, that is their choice. It can hardly be argued that they *suffer* as a result of abiding by their own religious convictions. The only question that might arise is the extent to which they thereby impose suffering upon those who cannot make their own choice, for example children and disabled people.

In the light of these considerations, I hope that the Inspector will, among other questions, put the following:

- i) how have Jewish people managed in the last hundred or so years;
- ii) how many people actually *suffer* from the absence of an eruv and exactly what degree of suffering is caused;
- iii) what have such people been doing thus far on the Sabbath and what difference will an eruv make to them?

My own view is that, as a matter of general principle as expressed in a) above, there is no need for an eruv. If, however, the Inspector decides to look at the matter from any other point of view, my expectation would be that careful examination of the evidence will establish no need that comes anywhere near satisfying the high level of proof required to justify the erection of poles and wires, however many or however few, on public land within the borough. If people choose a particular way of life, they should not expect that they are then entitled to gain relief from their self-imposed obligations by requiring that poles and wires be erected in an area inhabited by a great many more who do not share their beliefs and whose environment will be deleteriously affected.

Can an

October 1993

Statement by Michael Geoffrey Max to be presented at the Public Inquiry set for 30th November 1993 into an appeal by The United Synagogue Eruv Committee against a refusal of planning permission in respect of the erection of poles and wire.

Department of Environment Reference : APP/N5090/A/93/224571

Summary of the statement by Michael Geoffrey Max.

Part 1 - Introduction

Sets out biographical details which provide a background to some of the points made in Part 3.

Part 2 - Discussion of the application; the subject of the appeal and grounds of refusal based on planning consideration

"Eruv" is a concept. Permission is needed not for the concept but its physical manifestations (paras. 2.1/2.2).

"need" will be dealt with in Part 3 (para. 2.3).

Planning considerations discussed:-

- street scene/merit of poles/dwarfing of adjoining structures/ prominent addition to street scene (para. 2.4).
- poles at location 13 (Wildwood Road) (para. 2.5).
- various unattractive items affecting street scene (para. 2.6)
- encouragement of underground cabling (para. 2.7)
- removal of telegraph poles (para. 2.8)
- possible use of poles for street advertising (para 2.9)
- vandalism and increased activity (para. 2.10)
- road safety (para 2.11)
- criticism of planning officers' report to TP&R Committee but agreement with grounds of refusal and introduction of Council letter 4.3.93 as MGM1) (para 2.12)
- discussion of locations 13 (further) and 15 (para 2.13)
- noise (para 2.14)
- approval of whole or nothing and ongoing integrity (para 2.15)

Part 3 - Need

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Introductory comment (para 3.1)

Advice to Planning Committee on relevance of non-planning issues (para 3.2)

Non-consultation of views of members of United Synagogue (para 3.3)

Existence of United Synagogue since 1870 with no eruv (para 3.4)

Regret with need for personal statement (para 3.5)

Correspondence with United Synagogue to establish credentials of the Applicants (MGM2) and exhibiting extracts from United Synagogue Annual Report 31/12/93 (MGM3) and discussion of status of the United Synagogue Eruv Committee (para 3.6)

Criticism of United Synagogue promotion of the proposal with reference to funds for maintenance of the eruv, discussion of finances of United Synagogue (para 3.7)

Examination of applicants claims as to number of people who want/will benefit from the eruv by reference to U.S. membership figures (para 3.8)

Discussion of disadvantage and what creates disadvantage (para 3.9)

Changing nature of eruv (para 3.10)

Area of proposed eruv (para 3.11)

No balancing report so far on need aspects in Committee Report (para 3.12)

Nature of minority proposals and difficulty of organising the majority (para 3.13)

My views influenced by history and influences during formative years (para 3.14)

Suggestion that real motives behind proposal are demographic and arguments against (paras 3.15)

Permission likely to set a precedent (para 3.16)

Summary of relevant factors on "need" (para 3.17)

Part 4 - Conclusion

Objections on basis of need and exhibition of two letters to Barnet LBC (MGM4 and MGM5) (pars 3.6.1 - 3.6.2)

Final submission (para 4.2)

List of Appendices

Appendices MGM 1 - 5.

**Statement by Michael Geoffrey Max
in relation to a proposal for
"the construction of the North West London Eruv"**

Part 1 - Introduction

- 1.1 I first came to live in NW11 at the age of 5 in 1938. With the exception of a short period between 1958 and January 1963, I have lived in NW11 ever since. My wife and I have lived at 6 Wildwood Road, London NW11 6TB since January 1963.
- 1.2 As a young boy I attended the infant school at Childs Way NW11 until 1943 when I went to Haberdashers' Aske's (then at Cricklewood). I qualified as a solicitor in 1955 having obtained an LLB degree as an evening student at University College London. I have been in private practice in Central London throughout my professional career. I specialised, increasingly, in property related transactions. At one stage I was involved in a lot of work relating to Town and Country Planning.
- 1.3 As a National Serviceman between 1955 and 1957 I was commissioned in the Royal Artillery and spent over 16 months in Germany.
- 1.4 I was a local councillor representing the Hampstead Garden Suburb Ward between 1978 and 1986. I served on the Town Planning & Research Committee throughout that period. I was chairman of the Central Area sub-committee for some time and also served as vice chairman and chairman of the main committee. I also served on the Public Works and other committees at various times.
- 1.5 I was a member of the Council of the Hampstead Garden Suburb Institute, Central Square NW11, which provides adult education, from 1978 until 1992 and was chairman of the Institute Council for some 10 years. I was also a governor of Henrietta Barnett Girls School during the same period.
- 1.6 I have a large number of acquaintances in the locality as a result of my interest in local affairs.
- 1.7 As a boy, I attended Finchley Synagogue. I have been a member of Hampstead Synagogue, Dennington Park Road, NW6 since about 1958. Both those synagogues are constituent synagogues of the United Synagogue.
- 1.8 I have set out these personal details because they are the background to and provide a partial explanation of the contents of Part 3 of this statement.

Part 2 - Discussion of the application the subject of the appeal and grounds of refusal based on planning considerations

2.1 The application to Barnet Council appears to be for the construction of the "the North West London Eruv". The concept and description of an Eruv is explained to a limited extent in the papers accompanying the application and in the Background Information on page 4 of the Report to the Town Planning and Research Committee meeting held 24th February 1993. Further references to that Report will refer to it as "the Committee Report". I assume that the Committee Report will be amongst the papers supplied to the Inspector by the Borough and do not include a copy in this Statement to avoid unnecessary duplication. An "Eruv" is not an item which was contemplated, as a planning concept, by the Town and Country Planning legislation. Broadly speaking, planning legislation concerns itself with "development" as defined for the purposes of the planning legislation. An Eruv as such, does not fall within the definition of development. Only the creation of the physical manifestation of it, which does not yet exist, constitutes development.

2.2 Accordingly, I think that any aspect of the application which requests or appears to request permission for an "Eruv" is entirely irrelevant to planning legislation. The only proposals of the application which are relevant to the legislation are those which constitute "development" for the purposes of the Planning Acts namely the placing of vertical poles and wires. For the purposes of this part of my statement, I will look at the application not as an application "for the construction of the North West London Eruv" but, instead, an application for permission to install a number of poles and lengths of wire. In the same vein, I intend, in this part of the statement, to disregard the explanation for the poles and the wire so that I am addressing the following simple question:-

Should planning permission be granted for the erection of a number of poles and the installation of various lengths of wire as shown in the plans lodged with the Council and without any regard to the explanation for those poles and, therefore, without any regard to "need".

2.3 I will, however, deal with the question of "need" and the arguments on that aspect in Part 3 of this statement.

2.4 Looking at the proposed poles and lengths of wire without any reference to the explanation or need I submit that the planning arguments in favour of a refusal of permission are unanswerable.

- It is bad planning practice for the street scene to be cluttered by anything which does not add to the street scene.

- The poles have no intrinsic merit and will constitute an eyesore. In many cases, they will not merge into any background. They will stand out as individual additions to the clutter of the street scene against which they will be obtrusive.
 - In many of the proposed sites the poles will dwarf adjoining and nearby structures and will therefore have a considerable visual impact.
 - In several situations the poles would be a very prominent addition to the street scene - one of the most obvious being the series of 6.5m tall posts across Aylmer Road (location 15).
- 2.5 In the case of some proposals, conservation area principles are involved (especially in Hampstead Garden Suburb with which I am particularly concerned). The poles proposed at location 13 will impinge on the landscape of the Heath and will be an unnecessary addition to existing street furniture (see also para 2.13 below).
- 2.6 There is growing public concern with the effect on the street scene of aerials, satellite dishes, estate agents' boards, advertising generally, proliferation of signs and other street furniture.
- 2.7 Public utilities who depend on cables for distribution are being encouraged and, in many cases, required to submerge cables in order to avoid the proliferation of overhead cables. It is now recognised that good town planning practice demands that proliferation of street furniture should be avoided wherever possible.
- 2.8 During my period of residence in Wildwood Road, several telephone poles have been removed as telephone connections to houses have been placed underground including, in particular, one post which originally stood outside my house. It is to be expected that this process will continue and that existing street clutter constituted by telephone wires and poles will continue to be reduced. I would expect the introduction of cable TV to accelerate the process of burying telephone cables and I would also expect the telegraph pole adjacent to No.1 Wildwood Rise NW11 (location 13) to become redundant in the foreseeable future.
- 2.9 Whilst the use of lampposts for the display of signs by private traders is illegal, it is nevertheless a fact of modern life that lampposts and directional signs are used for the display of advertisements - especially, it seems, of fly posters advertising bargain, liquidation and "customs seizure" sales, car boot sales and other one day events. I believe that, if erected, the poles will be seen as ideal additional locations for such advertisements the display of which will give further prominence to the poles and thus increase still further their deleterious effect. I suggest that by reason of the general lack of consideration normally shown

by those engaged in fly posting (often during darkness to avoid detection), there will be a danger of damage not merely to the eruv posts, but also to adjacent private property in many of the proposed locations.

2.10 If the posts and wire were to become objects of vandalism - and it is a matter of regret that at present there are high levels of mindless vandalism simply to destroy as well as sectarian vandalism which must be anticipated by such a provocative proposal as this:-

- then considerable activity will be generated by remedial or replacement work.
- such work will create disturbance at normally quiet locations which will interfere with environmental quality and danger to and interference with traffic and pedestrians where the poles and wire are adjacent to or over roads.

2.11 I believe that the posts will at some positions have a detrimental effect on road safety. Those to whom the posts have a significance will, inevitably, glance at them and try to satisfy themselves as to the integrity of the posts and wire at the point past which they are driving. This will constitute an unnecessary and dangerous distraction to drivers at a significant number of busy junctions.

In considering this point, I would ask the Inspector especially to take into account some very heavy traffic flows in an area which:-

- inevitably suffers from a huge commuter flow generated not only from within Barnet but also by the considerable amount of traffic originating north of the borough and flowing between the trunk roads and motorways to the north and Central London to the south.
- generates a very heavy flow of school traffic between 0745 and 0930 during school terms in addition to heavy commuter traffic.
- is also affected by the increased vehicle flows at varying times on Friday evening (depending upon the season because Sabbath commences very early in December and much later in June) and on the eve of other Jewish holidays.

2.12 I believe that the planning appraisals in the Committee Report:-

- failed to attach sufficient importance to the fundamental proposition that unnecessary street clutter should be avoided.
- viewed the proposals from the point of view of the person in the street and against the background of existing clutter without recognising that in many location the poles will

figure prominently in views from within the adjoining or neighbouring property.

- incorrectly, in several instances, suggest that because of the existence of street furniture an addition to it would not have a detrimental effect or would not be incongruous. Such propositions are tantamount to saying that because something is already wrong, the addition of another mistake will not worsen the situation. I will deal with two particular examples in para 2.13.

It follows that I agree with the decision to refuse permission summarised in the Council's letter dated 4th March 1993 (copy attached as MGM1) and therefore support that refusal on the grounds given in that letter and for the reasons further elaborated in this part of my statement.

2.13 I refer to locations 13 and 15 referred to in the Committee Report.

- if the assumption (in para 2.8 above) in relation to the foreseeable removal of the telegraph pole adjacent to No.1 Wildwood Rise proves to be correct, and if this application is permitted, the opportunity to improve the character of the conservation area at this important point will have been lost. The site is particularly important because it is one of the crucial points at which "town meets country". There is a genuine prospect for an improvement of the conservation area at this point which must be taken into account.
- every one of the posts, wherever installed, will be something entirely new to the street scene. The very novelty of the proposition that poles joined by wire which serve no practical purpose and are not related to a general public utility service (otherwise than in the context of need considered in Part 3) must cast doubt on a planning appraisal which suggests (in relation to location 15 for example) that "the proposed post would not appear incongruous on the street scene".

2.14 I have not seen in the eruv proposal or in the Committee Report any indication that the question as to whether the poles and/or the wires would cause any whistling or noisy vibration as a result of wind movement and, if so, whether any nearby residents would be adversely affected.

- 2.15 If any single set of poles and wires is considered unacceptable then it follows that the whole of the scheme must be rejected. In the introductory pages to the Eruv proposal, it is stated that "in order to complete the boundary, gaps need to be symbolically indicated as 'gateways'. This is achieved by erecting the poles with a lintel wire spanning the opening".

It follows that if only some of the poles are considered acceptable, the need for completeness will not have been met and the application must fail. The Inspector has indicated that he will inspect each site separately and he will be able to reach his own conclusions as to the impact of each separate set of poles and wire.

- 2.15.1 The need for the continuous integrity of the Eruv is also emphasised in the introductory pages to the proposal and a paragraph on page 2 of the explanation deals with maintenance. It reads:-

"Maintenance

Since it is imperative that the Eruv is intact every Sabbath of the year, a system of weekly inspections will be instituted and a protocol to cope with worn components will be established."

- the application does not explain the consequences for a person who relies on the integrity of the eruv and who is ignorant of the fact that a strand of wire or a pole has been damaged (whether before or after the Sabbath has commenced)
- the application contains no assurance that adequate funds will be available at all times to meet maintenance costs or the premiums for adequate third party/public liability insurance.

3. Need

3.1 If the Secretary of State decides that he is unable to dismiss this appeal solely on the planning arguments dealt with in part 2 of this statement (and in relation to which I have made it clear that in my view there is an unanswerable justification on purely planning grounds for refusal) and that he must look at need in a wider sense then the submissions in this part of my statement become relevant and I have included them because the Inspector indicated at the Pre-Inquiry meeting on 30th September that "need" would be an issue to be dealt with at the Inquiry.

3.2 Hitherto, the Planning Committee has been advised that the application must be decided not on the basis of whether it is for or against an Eruv but only as to the planning considerations (see e.g. para 8.3.2 of the Committee Report). Nevertheless, it would be foolish to deny that other considerations have been urged on Councillors and in particular they will have been pressured by:-

- the "need" to show tolerance for religious minorities, the "need" to avoid any charge of anti-Semitism and the "need" to sympathise with the hardships suffered by a number of young parents and disabled people.
- the canvassing of individual councillors (by those for and against on what is by any standards a very emotive issue).

I believe that if the grant or refusal of planning permission depends not on pure planning considerations but on "need" then a wide variety of important issues must be properly debated and investigated.

3.3 I have been a member of the United Synagogue since about 1958. Neither the head office of the United Synagogue nor the managing committee of the Hampstead Synagogue have sought my view as to whether I, as a member of the United Synagogue, want this particular eruv or any other eruv or whether I approve of the United Synagogue sponsoring the proposal.

3.4 The United Synagogue was constituted by statute in 1870. The fact that well over 100 years have passed without any eruv and without the promotion of eruvs forming part of United Synagogue policy clearly demonstrates that such a policy was seen as irrelevant to the needs of its members and that the establishment of eruvs has not been seen as a sine qua non of religious observance within the United Synagogue until now.

3.5 It is only after much heart searching that I decided that I must submit a personal individual statement to the Inquiry. I had hoped to avoid doing so. I considered whether to associate myself with a group opposing the proposal. I concluded that I had no alternative but to present my own statement when the Inspector indicated that

he would receive evidence on need and that the Inspector must be made aware of the stress which this proposal has placed on me and the worry that its implementation will cause to me.

3.6 I decided in July 1992 to try to find out a little more about the standing of the applicants vis á vis the United Synagogue. I attach as Exhibit MGM2 a bundle of copies of letters dated 12/7/1993, 19/7/1993, 28/8/1993 and 11/8/1993. I attach as Exhibit MGM3 a bundle comprising extracts from the United Synagogue Annual Report and Financial Statements 1992-5753.

3.6.1 I think that the information given in response to my original letter suggests the following scenario. A small number of people living in NW11 and NW4 decided that they would like to establish an eruv and have raised the initial finance. The general body of members of the four synagogues were not canvassed for their views. The Honorary Officers of the United Synagogue were persuaded to allow the name of the United Synagogue to be associated with the application in order to give the application an increased credibility. Faced with this appeal and the possibility that this Inquiry might question the status of the applicant and the validity of its claimed entitlement to represent the Jewish community, the President of the United Synagogue decided that he would advise the Council of the United Synagogue that he will formally establish a United Synagogue Eruv Committee (see MGM2).

3.6.2 It is inevitable that people who stand for election to the management board of local synagogues and to membership of the Council of the United Synagogue will be those most concerned with the day to day management of the Synagogue and, for the most part, those people will tend to be only the more observant members of the congregation. They do not constitute a representative cross section of their congregations. The United Synagogue does not insist upon any minimum standards of religious observance by its members. Its clergy encourage increased observance but the membership includes people whose range of observance covers a wide spectrum. I do not think that, given a chance freely to voice an opinion, the majority of the members of even the four congregations of Finchley, Hendon, Golders Green and Hampstead Garden Suburb would "be overwhelmingly" in support of an eruv or could honestly say that they "need" an eruv and cannot, without one adequately observe their religion.

3.6.3 I suggest that the proposal actually emanates from a small, well organised number of people who have themselves created a measure of support and who are hoping that the proposal will be approved:-

- with little active opposition because of the facility with which opposition can be branded as anti semitic or intolerant.

- by reducing objection and doubt within the Jewish community first by not taking a full range of soundings of opinion and secondly, by encouraging people not to speak their minds.
- because the current fashion is to elevate every minority demand on the basis of tolerance without questioning the intolerances in the demand itself.
- by the emotional appeal created by emphasis on the disadvantages facing the disabled and parents of young children.

3.7 I cannot see the promotion of an eruv as responsible behaviour by those promoting it when so many other aspects of the United Synagogue affairs seem to be starved of funds. As a member at Hampstead Synagogue I am concerned that its fine listed building is not properly and regularly maintained because of shortage of funds. As a member of the United Synagogue, I am aware of a general shortage of funds at the United Synagogue, of financial reviews seeking methods of remedying that shortage. Against such a background, I do not see the proposal for this eruv as a major priority to ensure the survival of observant Judaism in the area.

3.7.1 In the year ended 31st December 1992, the United Synagogue deficit was £2.67M against a deficit of £1.537M the previous year (see page FS.2 of MGM3). It had an accumulated deficit of £3.912M as at 31st December 1992 compared with £1.91M at 31st December 1991 (see page FS.3 of MGM3). Its bank borrowings rose to £7.812M on 31st December 1992 from £6.526M at 31st December 1991 (see page FS.4 of MGM3). As at 31st December 1992 Golders Green and Finchley Synagogues between them owed £5.04M to the United Synagogue (see page FS.12 of MGM3) and the finances of Finchley Synagogue are in such bad shape that the United Synagogue now wants to install managers and to take control away from the elected honorary officers and Board of Management.

3.7.2 If the proposal is accepted, more information must be insisted upon as to how it is to be funded and maintained and how any costs of removal will be met (should that become necessary). Reference to the sad financial state of the United Synagogue suggests that it would be well advised not to accept any funding responsibility.

3.7.4 In the wider context of community needs, I believe that there are much higher priorities and more deserving causes than a few poles and lengths of wire which, if installed, will give rise to numerous disadvantages as referred to below.

3.8 On page 1 of the Introduction to the Revised Plans of May 1993, it is stated that:-

"The Jewish community in Barnet is estimated to exceed 50,000, the majority of whom are members of the United Synagogue".

This statement is patently wrong. On pages R18 and R19 of MGM3, membership figures of the United Synagogue are set out. The following is a summary of the figures relating to constituent and affiliated Synagogues in Barnet.

Constituent	Membership whole borough (men and women)	Eruv area (men and women)
Edgware	1733	--
Finchley	1749	1749
Golders Green	826	826
Hampstead Garden Suburb	1721	1721
Hendon	1737	1737
Mill Hill	740	--
<u>Affiliated</u>		
Barnet	481	--
	8987	6033
	====	====

The total of 8987 includes:-

- some single people (widows and widowers and older people who have not married). Young people tend not to become members in their own right until they marry or are well into their twenties.
- older couples whose children are grown up and who are either members in their own right or are not members at all.
- married couples with young families.
- members of all the United Synagogues in the Borough of Barnet.

3.8.1 I cannot quote accurate statistics and I doubt if they are available but if one makes the generous assumption that of the 8987 individual members over the whole of the borough (which I will call 9000 for the purpose of this illustration):-

- (a) a mere 1000 are single members 1000
- (b) a possible 3000 are young married couples who have not yet started a family or elderly people whose children have left home 3000

(c)	a (perhaps generous) 5000 have between them young children whose ages range between 0 to 25 at a (very generous) average of - 4 per couple	<u>5000</u> <u>9000</u>
(d)	children of (c) 2500 x 4	<u>10000</u> <u>19000</u> =====

I have purposely, for the purposes of illustration, allowed generously high figures in categories (c) and (d) but even on that basis, it is clear that if the assumption of 50,000 is correct the majority cannot be "members" or even regular attenders by virtue of family connection at, United Synagogues in Barnet.

3.8.2 The facts of the matter are:-

- that some, like me, are members of United Synagogues outside the borough.
- many members of the United Synagogue do not attend Synagogue regularly and cannot be described as observant.
- many Jewish people are members of Synagogues belonging to the Reform, Progressive and Liberal movements each of which has adopted its own different and modified ritual (which, so far as I am aware, does not call for an eruv).
- many are members of small congregations generally very religious and often centred around a particular individual rabbi and usually having only a small geographic spread.
- many Jewish people are not members of any Synagogue.

3.8.3 In the early stages of the application for planning permission, it was reported in the Jewish Chronicle (a weekly publication which reports amongst other things, on community issues) that some of the very orthodox communities opposed the eruv proposal. I must confess that I did not then understand the opposition nor do I know for certain whether, and if so, to what extent such opposition continues.

3.8.4 I submit that the proposition in the Introduction to the revised plans of May 1993 that "The Eruv, when complete, will be of immense benefit to thousands of orthodox Jews" is a massive over-statement of the potential benefit.

3.9 Much has been made of the potential benefit to "young mothers and children, the elderly and the handicapped, all of whom are frequently house bound every Saturday".

3.9.1 Such people are disadvantaged not by their disabilities or their infant children but by those responsible for defining what is and what is not work and by their failure to respond to changing times and circumstances. It might also be said that they are disadvantaged by the degree of observance they choose to adopt. The degree of observance of religion is a matter of personal choice the exercise of which must not be allowed to impinge on others or to require specific privileges and rights to be granted by the secular government.

3.10 The details of what constitutes an eruv have changed from time to time to meet changes in the circumstances and conditions in which orthodox Jews have lived from time to time. As an example, one can cite the modifications which were developed to establish an eruv for a tenement building or one having a common yard. No tangible constructions were required. Instead, it was established that if the residents in such a block, prior to the commencement of the Sabbath, left a token piece of food elsewhere in the block and declared the piece of food to be in common ownership, then each separate apartment in the block would be within the eruv.

3.11 A further feature to be questioned is the size of the proposed area. Originally, the need extended only to movement in much smaller areas such as a small village or a multi occupied block or a limited number of neighbouring streets in a town. The proposed area of enclosure includes a large number of what were once and even now are distinct and separate areas of population each with its own infrastructure. It involves not merely NW11 and NW4 but significant portions of N2, NW2 and N3. This suggests that what is really appropriate and in accordance with the original "village" eruvs would be a series of eruvs drawn by reference to the "spheres of influence" or "constituency" of each of the four Synagogues. The need for an ability to push a wheelchair or perambulator from The Bishops Avenue, N2 to Colindeep Lane as opposed to the need to move freely in, say, the Garden Suburb, or Golders Green and Childs Hill, or Temple Fortune and Finchley or Hendon is questionable. I submit that no such need can be shown. The size of the area is inappropriate to the need and for this reason (amongst others), the application is so basically flawed that it should be refused. There may be other explanations of the size of the area proposed with which I will deal below.

3.12 Although the Committee Report included elements of explanation and a summary of objections, some of which related to need, the officers recommendations made it clear that "the Committee should only take into account material planning considerations" (para 8.3.1). The Committee was also told (in para 8.3.2) that they were not asked to decide whether "it is for or against the Eruv in principle" and that "It is only the erection of the posts (and wire) which requires planning permission". "Need" was not seen as a relevant consideration and it is not surprising that the Committee Report does not contain a balancing expert view on the need as explained by the applicants.

3.12.1 I repeat that it is a matter of regret for me that this section of my proof has had to be included as a result of "need" becoming an issue. I do not think it should be an issue because the planning application process does not provide an appropriate forum or procedure properly to evaluate this sort of "need". It is principally for this reason that I have felt obliged to put my personal views and concerns. They are, I submit, as important as the views of those who are applying for the permission. I felt it important also that this Inquiry should be aware of the varying degrees and method of observance by different parts of the Jewish community to reach an informed opinion:-

- as to the justification for the concept of an eruv in the overall context of Jewish life in England.
- as to whether the particular area proposed should constitute an eruv.
- as to the sufficiency, suitability or otherwise of any constituent physical parts of any eruv which may be appropriate.

3.13 It is a common feature of minority proposals that the proposers are able to identify a large number who, they allege, will benefit whilst the needs and wishes of the majority are neglected or not ascertained. In this case, the minority who support the proposal are vocal and well organised. They have achieved an added mantle of respectability for their application as a result of the willingness of the Honorary Officers of the United Synagogue to permit the applicants to call themselves "The United Synagogue Eruv Committee. The majority of the community are unaware of the proposal and those who are aware of it:-

- are often afraid to speak out because of a fear of unfounded and hurtful accusations of anti-Semitism or intolerance.
- suffer from a lack of organisation.
- face the inherent difficulty in making a meaningful objection (it is common for the man in the street to perceive a letter of objection as a waste of time or as not adding anything to a case they see as being made by others).
- are often unable to devote time to opposition.
- if they are Jewish but are nevertheless opposed to the proposal or who do not support the conception are being asked not to rock the boat or bring into the public arena the doubts within the local Jewish community.

3.14 I particularly enjoyed history at school. I became and remain convinced, that government and civil affairs must be conducted in a way which tolerates religious beliefs and allows all persons to

observe their religion without interference. Equally, I was convinced that religion is a personal matter which one chooses to observe or not and that religion must neither interfere with the running of a secular state or ask for particular privileges from the state. I also think that theocracy is incompatible with democracy and a multicultural state and for that reason have an inbuilt aversion to interference by fundamental (or any other) religious groups in the civil governance of a country.

3.14.1 I was brought up in difficult times to the belief that it was right for me to integrate into the English scene but that it was essential for me never to forget that I am a Jew. I think I have adhered to those precepts though I recognise that I draw my line in religious observance (as opposed to consciousness of what I am and of my roots) at a different level from the line drawn by those who support the Eruv.

3.15 I am convinced that whilst highlighting the benefit that the provision of an eruv would constitute for a few disabled people and young mothers has a hidden underlying objective. I now quote an extract from an article "Synagogue News" which appeared in "Suburb News" (the newspaper of the Hampstead Garden Suburb Residents Association) of Autumn 1992:-

".....towards the end of October the Rabbi, Edward Jackson, will be leaving for a richly deserved 3 month sabbatical.

Before Rabbi Jackson leaves he hopes that plans for an 'Eruv' in the Suburb will be implemented. The plans have caused some controversy and confusion but their intention is purely to make Sabbath observance easier by permitting carrying and the pushing of prams and buggies.

This will cause no inconvenience to Suburb residents, but however make a considerable difference to the lives of many people living in the area as well as encouraging young people to come to the Suburb and provide lifeblood for the future"

3.15.1 I believe that the underlined words in the quotation show that the main thrust of the proposal is demographic and is intended to encourage movement into the area defined as the eruv of an increasing number of ultra orthodox Jews. This will tend to create a closed and defined community in which integration and harmonious contact of different cultures and backgrounds will no longer be the norm. In that sense, it will, for me and many others who have become used to a multicultural society, impose a ghetto like atmosphere which I will find alien. The poles near my home - which

I will see and drive past every day - will not be merely an eyesore and a visual intrusion. They will be a daily reminder of an ethnic enclosure forced upon me by co-religionists, many of whom are newly arrived in the district seeking to impose their way of life and aspirations for a closed society in a very visible way; a way which is incompatible with everything which I and many other long standing Jewish residents as well as residents of other denominations have come to cherish and be proud.

3.15.2 History contains numerous examples of the problems which flow from:-

- population movements which put the original inhabitants under pressure as the number of newcomers increases.
- the intolerances which flow from insular upbringing.

It is not possible to prevent a street from becoming "Jewish" or "Protestant" or "Black" or "Asian" or "Chinese" by the process of normal sale and purchase. There is a natural tendency for immigrants to look for company and mutual self help amongst their own group especially during the early years of immigration. It is an entirely different proposition for a whole area to be legally defined for the benefit of a minority by a secular decision reached only on the answer to the question as to whether or not planning permission should be granted for the erection of a series of poles and lengths of wire.

3.16 The grant of planning permission for this eruv will give other minorities up and down the country encouragement to reverse the concept of integration which over many years has led to ever increasing tolerance of and opportunity for minorities in this country. It will certainly lead to more applications for eruvs elsewhere. One must assume that if this succeeds, the Edgware, Mill Hill and Stanmore congregations will also apply and the attempt will be made to justify posts in the even more open aspects of those lower density areas many parts of which are adjacent to Green Belt land.

3.17 I submit that if need is a relevant factor:-

- my state of mind and concern and that of many others who have expressed similar concerns must also be taken into account.
- that the proposers of the eruv have shown no understanding of or sympathy for these genuinely and sincerely held concerns.
- the principle of establishing an eruv should not be decided before the United Synagogue has conducted a referendum to ascertain the views of the general body of its membership

and it can be shown, as a result of that referendum that a majority of such members support a policy for establishing eruvs.

- that the normal planning process has not yet resulted in any comprehensive investigation into the alleged religious need for an eruv.
- that the secular authority (the local Council) and the planning process should not be used to promote demographic movements without full examination of the implications.
- that before anything as radical as state approval is granted to legalise a defined area for the sole benefit of one religious minority, the principle should be the subject of a governmental inquiry into all aspects of the proposal taking into account the extent to which other eruv areas may be proposed, the social consequences and the effect of the establishment of such areas on individuals and on society generally and what other proposals might be made not merely by Jewish but by other religious communities which might give rise to such a range of objections and concern as has been generated by this application.

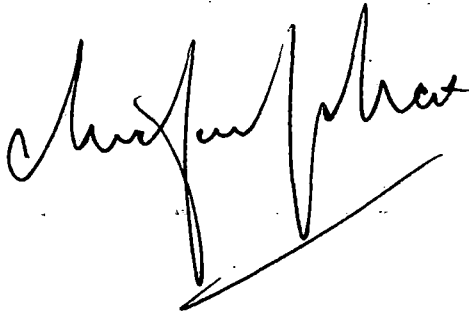
Part 4 - Conclusion

4.1 The papers to be made available to the Inspector should include copies of letters written by me to the London Borough of Barnet dated 13th January and 14th July 1993. As they succinctly expressed my views at those times and for ease of reference I attach copies of them marked MGM4 and MGM5.

4.2 I submit that:-

- there are overwhelming planning grounds to justify refusal of planning permission.
- "need" should not be allowed to override the justification for refusal on pure planning grounds.

And accordingly, that the appeal should not be allowed.

A handwritten signature in black ink, appearing to read 'Christopher P. Hax', written over a horizontal line.

Appendices**Relevant to**

MGM1	Copy of letter dated 4th March 1993 by London Borough of Barnet	para 2.12
MGM2	Copies of exchanges of correspondence M G Max/United Synagogue	paras 3.6, 3.7 and 3.8
MGM3	Copies of extracts from United Synagogue Annual Report for Year Ended 31/12/92	ditto
MGM4	Copy of letter by M G Max to) L.B. Barnet 13/1/93)	para 4.1
MGM5	ditto 14/7/93)	



DIRECTOR TONY WILLIAMS CEng MICE

PLANNING GROUP
BARNET HOUSE
1255 HIGH ROAD
WHETSTONE
LONDON N20 0EJ
Tel. No. 081 446 8511

TECHNICAL SERVICES

Our Ref: Eruv1
Date: 4 March 1993
Contact: Ms D McGurrian
Ext: 4983

Dear Sir/Madam

Town and Country Planning Act 1990
Proposal: Proposed Eruv
Location: Various locations within the London Borough of Barnet

Further to your letter in respect of the above, I have to inform you that this application was considered at a recent meeting of the Planning Committee and that, after careful consideration of all the facts, the committee decided to refuse it for the following reasons:-

01

The proposed poles and wire would result in the introduction of additional street furniture which would be visually intrusive and detrimental to the character and appearance of the street scene contrary to policies G1, G2, G3 A and D, G18, T1.1, T2.1 and T3.1 of the Unitary Development Plan.

02

The proposed poles and wires along Wildwood Road by reason of their size, number and general appearance would be visually intrusive, impair the continuous landscape of Turners Wood and the adjoining Meadow Land and cause demonstrable harm to the environment of a conservation area of national importance.

I am sure that you will appreciate that this application has generated substantial public interest, response and associated demands on officer time. I regret that due to staff resources it will not therefore be possible to enter into further correspondence.

D McGurrian
Planning Officer

S Saideman Esq
United Synagogue
Woburn House
Tavistock Square
London WC1H 0EZ

12 July 1993

Dear Seymour,

Proposed Eruv Hendon/Golders Green

I imagine that you are well aware of the application made in the name of "United Synagogue Eruv Committee" giving as its address 9 West Heath Road, London NW3 7UX.

I have been a member of United Synagogue for many years and I do not support - indeed I oppose - the Eruv proposal. I believe that there are many other members of the United Synagogue who are not comfortable with the proposal - even if they do not actively oppose it.

I do not like to be associated, because of my membership of the United Synagogue, with this proposal and I would like to raise with you the following points:-

1. Under what authority does the United Synagogue Eruv Committee operate?
2. What United Synagogue funds, if any, are being employed?
3. With so many more important matters to be dealt with, why is the United Synagogue allowing itself to become embroiled in this particularly contentious proposal?
4. Has any attempt been made to consult the general membership of the United Synagogue as to whether that membership does wish itself to be associated with this sort of proposal?
5. Has the United Synagogue Council considered the feelings of disquiet amongst large numbers of members of the Jewish community (not merely United Synagogue members) as well as amongst non-Jewish members of the community and, if so, with what result?

I do not need to specify my objections to the proposal. The matter has been debated long and often in newspapers and in letters to newspapers.

In any case, you will know me well enough to understand that my objections are sincere and well reasoned. I had hoped that I would not have to write to you in your capacity as President of the United Synagogue. Now that a revised application has been made and the original one is being taken to appeal, I have no alternative.

Incidentally, I have, on several occasions, written to the Chief Rabbi. I am disgusted by his lack of concern.

Equally, I am disgusted by those people who are prepared to say to me, in private, that they regard the proposal as lunacy but are not prepared, themselves, to speak out. Why?

Yours sincerely

MICHAEL G MAX



UNITED SYNAGOGUE

Woburn House Tavistock Square London WC1H 0EZ
Telephone: 071 387 4300 Facsimile: 071 383 4934

19 July 1993
1 Ab 5753

Mr M G Max
6 Wildwood Road
London NW11 6TB

Dear Mr Max

I have received your letter of the 12th July, addressed to the President, concerning the Eruv.

Mr. Saideman is currently abroad, but your letter will be in his mail on his return.

I am enclosing a copy of the United Synagogue's Annual Report, and I would refer you to the paragraph in my own report on Page R13, in which I deal with some of the questions that you have raised in your letter to Mr. Saideman.

The Honorary Officers of the United Synagogue are agreed to promote the establishment of Eruvim in those areas of the Greater Metropolitan area, where the United Synagogue community expresses the need for an Eruv.

Jonathan Lew
CHIEF EXECUTIVE

JML/ba3.603

President: Seymour G Saideman
Vice-Presidents: Anthony Ansell, Leslie Wagner Treasurers: Leslie Elstein, Stephen Forman
Chairmen of Committees: Bequests & Trusts: Anthony Cowen Burial: Elkan D Levy Education: Maurice De Vries Kashrut: Alan J Kennard
Chief Executive: Jonathan M Lew

Mr Jonathan Lew
United Synagogue
Woburn House,
Tavistock Square
London WC1H 0EZ

28 July 1993

Your Ref: 1Ab 5753

Dear Mr Lew,

Thank you for your letter dated 19th July and for the copy of the Annual Report. It does, as you say, answer some of the questions but not all of them. I look forward to hearing from Mr Saideman on the remainder of the points which I raised.

Yours sincerely

MICHAEL G MAX



UNITED SYNAGOGUE

Woburn House Tavistock Square—London WC1H 0EZ
Telephone: 071 387 4300 Facsimile: 071 383 4934

11 August 1993
24 Ab 5753

Mr. Michael G Max
6 Wildwood Road
London NW11 6TB

Dear Michael,

Re: Eruv

Thank you for your letters of 12 July, to which you already have a reply, and 28th July.

Members of the United Synagogue Council have always been appraised of the situation and I intend following my predecessors practice of updating them from time to time.

Indeed, I intend to advise the Council at our next meeting on the 20th September that I am formally establishing a United Synagogue Eruv Committee. The future of the United Synagogue will be determined by our younger members and I know how important it is for them. There is, additionally, a continuing demand from our older members.

I have no doubt that the majority of our members do support the campaign, but in specific answer to your questions I do not believe there is any requirement to consult the general membership or to have the matter discussed at length at meetings of the council. If there is a request from the Council, then I would be pleased to allow a discussion on the matter, but if I have read the signs correctly, I believe that support for the establishment of Eruvim would be overwhelming and go against you.

Knowing you as I do I respect your views in this matter, and I would not want to influence you one way or the other. However, I believe there is a wind of change, supported quite clearly by the establishment of Eruvim in all free countries of the world. I cannot hope that you will drop your opposition, but, in turn, I hope you will understand the views of those who are campaigning for their establishment.

Yours sincerely,

SEYMOUR G SAIDEMAN
President

President: Seymour G Saideman

Vice-Presidents: Anthony Ansell, Leslie Wagner Treasurers: Leslie Elstein, Stephen Forman

Chairmen of Committees: Bequests & Trusts: Anthony Cowen Burial: Elkan D Levy Education: Maurice De Vries Kashrut: Alan J Kennard

Chief Executive: Jonathan M Lew

Registered Charity Number 242552



UNITED SYNAGOGUE

ANNUAL REPORT AND
FINANCIAL STATEMENTS

1992 – 5753



ERUV

Last year I reported on the co-operation initiated for a North West London Eruv, to be established under the Halachic Authority of the London Beth Din.

Four individual United Synagogue communities, Finchley, Hendon, Golders Green and Hampstead Garden Suburb have participated in the Eruv Committee. A small amount of funding has been raised by those local communities independently from their membership subscriptions, to provide some initial working funds for the Committee.

The Eruv project has the support of the Honorary Officers, and one of their number acts as liaison with the Eruv Committee. No funding has been provided from the General and Charitable Purposes Account of the United Synagogue, nor from any funds managed or controlled by the Honorary Officers.

It has been reported that the Eruv proposals were approved by the Public Works Committee of the London Borough of Barnet, but were turned down, despite the professional planners' endorsement, by the Planning Committee. The Eruv Committee is now considering lodging an appeal with the Department of the Environment

SOVIET JEWRY

Our Soviet Jewry office is managed voluntarily by Ruth Urban and Cynthia Jacobs. They are also the United Synagogue's representatives on the National Council for Jews in the former Soviet Union and on the Standing Conference on Central and East European Jewish Communities.

The office has set out to encourage individual United Synagogues to 'twin' with some of the communities in the former Soviet Union. There has been enthusiastic response from those who are actively twinned. Personal contact has been made by visits to liaise on particular projects, for example help with setting up a cheder or Jewish school, or a welfare group for the elderly.

Our Soviet Jewry groups raise the money to help send their Rabbi, teachers, youth leaders, doctors as well as other members to educate and fill the numerous needs of those communities including religious and cultural materials, medical supplies and food for the elderly. Three communities recently brought over teachers from their adopted towns to attend a specially arranged seminar at the Institute of Jewish Education - this is the third year that such a seminar has been arranged. Whilst many may feel that it would be wiser for all Jews living in Russia to emigrate to Israel, for many in Russia it is neither feasible nor practical. For those who are staying support from members of the United Synagogue is immensely beneficial in helping them to create their own communities. The United Synagogue can show by example the way to modern Jewish life - by the centrality of our Synagogues as places to bring together our old and our young, for prayer, study and social activities and not as in the former Soviet Union a place for prayer used mainly by the elderly.

ISRAEL COMMITTEE

The Israel Committee was set up by the Council to create, for the members of the United Synagogue, a platform for promoting and enhancing their awareness of Israel through non fundraising and non political activities.

In 1992 two public meetings were held. In February, His Honour Israel Finestein QC, at a meeting held in Chigwell Synagogue presented an historical perspective of the 25 years since the Six Day War.

In April, at Hampstead Garden Suburb Synagogue, and as part of the recognition of the 500th anniversary of the expulsion of the Jews from Spain, Rabbi Dr. Abraham Levy - the Communal Rabbi of the Spanish & Portuguese Community - lectured on "The Sephardim - Diaspora and Israel".

WELFARE

VISITATION

The Visitation Committee is recognised by Central Government as the organisation responsible for ministering to the Jewish Community in the Greater London Area who are in hospitals or in prisons. It also organises a Bereavement Counselling Service. To cover the services for which we are mandated we must rely on a number of volunteers in each of our disciplines. In some areas we will, in the future, be placing greater reliance on voluntary input.

The Hospital Chaplaincy Service is vital. It demands our presence so that we are seen to be carrying out our obligations in the same manner as the principal religious groups in this country. Both the Anglican and Catholic denominations have a high profile in the institutions in which our Ministers are also working. Our numbers cannot warrant a full-time presence at any location. We are limited in the complement of personnel available to us because of the other calls placed upon our Ministers. We are, therefore, planning to meet the needs of to-day's hospital patients with a "Chaplain's Representative" scheme. We shall be running a pilot scheme later in 1993 and will build upon the experience gained.

There are a number of hospitals for the mentally ill and/or handicapped which fall within our remit. Over the years a pattern has emerged whereby these special hospitals have been receiving the services of retired Ministers as Chaplains, but we are now experiencing a dearth of Ministerial assistance. We are considering using a trained group of volunteers to regularly visit, on behalf of a Minister, who will still retain overall responsibility for the spiritual wellbeing of those within the hospitals.

PRISON CHAPLAINCY

We met with the Director General of the Prison Department in December 1992 to review the arrangements for the provision of Kosher food in prisons. The Visitation Committee is currently required to finance a Kosher Meals Service for those prisoners who meet the criteria agreed a few years ago. We have requested that this financial burden be



UNITED SYNAGOGUE

INCOME AND EXPENDITURE ACCOUNT for the year ended 31st. December, 1992

		1992	1991
			Restated
	Note	£'000	£'000
INCOME			
Constituent Synagogue income	1	7,637	7,433
Other income	2	756	570
Burial Society activities - Net Income	3	63	275
Funeral Expenses Scheme - Net Income	3	147	46
		<u>8,603</u>	<u>8,324</u>
EXPENDITURE			
Constituent Synagogue expenditure	4	5,796	5,615
Other expenditure	5	3,842	3,663
		<u>9,638</u>	<u>9,278</u>
EXCESS OF EXPENDITURE OVER INCOME ON OPERATIONAL ACTIVITIES			
		(1,035)	(954)
Interest Payable	6	<u>(512)</u>	<u>(332)</u>
		(1,547)	(1,286)
Deficits recoverable from Synagogue Communities	11	220	130
Provision for irrecoverable deficits of Synagogue Communities	11	<u>(286)</u>	<u>-</u>
		(1,613)	(1,156)
Realised losses on investments	7	-	(19)
Unrealised surpluses / (losses) on investments	8	113	(124)
Net proceeds on sale of property		91	-
Purchase of and expenditure on properties		(130)	(238)
		<u>(1,539)</u>	<u>(1,537)</u>
Exceptional Items	9	<u>(1,131)</u>	<u>-</u>
NET DEFICIT FOR THE YEAR	19	<u>(2,670)</u>	<u>(1,537)</u>



UNITED SYNAGOGUE

BALANCE SHEET as at 31st. December, 1992

		1992	1991
	Note	£'000	Restated £'000
FIXED ASSETS	10	96	-
DEFERRED ASSETS	11	5,765	5,448
CURRENT ASSETS			
Stocks	12	82	88
Investments (at market value)	13	1,139	1,018
Debtors and Prepayments	14	1,047	1,565
Cash at Bank		1,449	790
		<u>3,717</u>	<u>3,461</u>
CURRENT LIABILITIES	15	<u>11,949</u>	<u>9,718</u>
Net Current Liabilities		<u>(8,232)</u>	<u>(6,257)</u>
		(2,371)	(809)
LONG TERM LIABILITIES			
Bank Loans	16	-	(382)
Provision for Liabilities and Charges	17	(1,541)	-
		<u>(3,912)</u>	<u>(1,191)</u>
ACCUMULATED DEFICIT, NET OF RESERVES	18	<u>(3,912)</u>	<u>(1,191)</u>

These Accounts were approved by the Honorary Officers on 17 June, 1993 and signed by the Treasurers on their behalf.

L. C. Elstein

S. J. Forman

UNITED SYNAGOGUE

CASH FLOW STATEMENT for the year ended 31st. December, 1992

	1992	1991
	£'000	Restated £'000
Net cash inflow / (outflow) on operational activities (see below)	98	(529)
Returns on investments and servicing of finance		
Interest paid	(512)	(332)
	<u>(414)</u>	<u>(861)</u>
Investing activities		
Payments to acquire tangible fixed assets	(122)	-
Net proceeds of sale of investments	-	746
Purchase of investments	(8)	(1,444)
	<u>(130)</u>	<u>(698)</u>
Net cash outflow before financing	(544)	(1,559)
Financing		
Bank loan transferred to current borrowing	(382)	-
Bank loan repaid	-	(60)
Funds held for Bequests and Trusts	(28)	(38)
Advances repaid by Synagogue Communities	1,025	1,144
Advances made, funds applied and interest charged to Synagogue Communities	(1,357)	(1,894)
	<u>(742)</u>	<u>(848)</u>
Decrease in cash and cash equivalents	<u>(1,286)</u>	<u>(2,407)</u>

Notes to cash flow statement :

1. Reconciliation of Excess of Expenditure over Income to		
Net cash inflow / outflow on operational activities :		
Excess of Expenditure over Income on operational activities as shown on the Income and Expenditure Account	(1,035)	(954)
Depreciation	26	-
Provision for liability charged in General & Charitable Purposes - Shechita	251	-
Decrease / (Increase) in stocks	6	(21)
Decrease in debtors	518	364
Increase in long term debtors	(101)	(12)
Increase in creditors and accruals	472	332
Purchase of and expenditure on properties charged in Income and Expenditure Account	(130)	(238)
Net proceeds of sale of property	91	-
Net cash inflow / (outflow) on operational activities	<u>98</u>	<u>(529)</u>
2. Analysis of changes in cash and cash equivalents during the year :		
Balance at 1 January, 1992	(6,526)	(4,119)
Net cash outflow	(1,286)	(2,407)
Balance at 31 December, 1992	<u>(7,812)</u>	<u>(6,526)</u>
3. Analysis of the balances of cash and cash equivalents shown in the balance sheet :		
	1992	1991
Cash at bank and in hand	1,449	790
Bank borrowings	(9,261)	(7,316)
	<u>(7,812)</u>	<u>(6,526)</u>

NOTES TO THE ACCOUNTS (continued)

	1992	1991
	£'000	Restated £'000
11. DEFERRED ASSETS		
Advances to Constituent Synagogues, less provision (see below)	5,545	5,329
Long term loans to employees	220	119
	<u>5,765</u>	<u>5,448</u>

ADVANCES TO SYNAGOGUE COMMUNITIES

	Balance 1 Jan. 92 £'000	Advanced during year £'000	Interest charged £'000	Repaid during year £'000	Balance 31 Dec. 92 £'000
CONSTITUENT SYNAGOGUES :					
Belmont	276	23	19	46	272
Borehamwood, Elstree and Radlett	5	157	8	63	107
Bushey	629	-	76	37	668
Chigwell & Hainault	132	-	13	83	62
Cockfosters and North Southgate	12	-	2	7	7
Cricklewood	-	35	-	-	35
Dollis Hill	11	12	2	-	25
East London	-	13	-	-	13
Edgware	416	1	61	46	432
Finchley	108	92	22	-	222
Finsbury Park	50	14	7	-	71
Golders Green	288	18	39	63	282
Hackney	70	34	10	-	114
Hampstead	137	-	11	148	-
Ilford	82	20	13	-	115
Kenton	152	-	22	44	130
Kingsbury	115	45	17	4	173
Mill Hill	13	3	2	18	-
New West End	58	-	6	42	22
Newbury Park	135	-	20	2	153
Palmers Green and Southgate	2	-	-	-	2
Pinner (see below)	1,672	118	248	96	1,942
Richmond	13	-	2	1	14
St. Johns Wood	376	-	54	106	324
South Hampstead	56	-	4	8	52
South Tottenham	33	19	5	-	57
South West London	15	1	2	-	18
Stanmore and Canons Park	135	-	20	30	125
Watford	21	207	7	61	174
Wembley	11	-	1	12	-
West Ham and Upton Park	-	6	-	-	6
Woodside Park	162	-	23	100	85
	<u>5,185</u>	<u>818</u>	<u>716</u>	<u>1,017</u>	<u>5,702</u>
AFFILIATED SYNAGOGUE :					
Potters Bar	144	-	7	8	143
	<u>5,329</u>	<u>818</u>	<u>723</u>	<u>1,025</u>	<u>5,845</u>
less provision in 1992 for irrecoverable deficits	(166)	(134)	-	-	(300)
	<u>5,163</u>	<u>684</u>	<u>723</u>	<u>1,025</u>	<u>5,545</u>



Membership of the United Synagogue at 31st December, 1992
(31 December 1991 figures in brackets)

	Men	(1991)	Women	(1991)	Total	(1991)
Constituent Synagogues						
Belmont	508	(518)	170	(156)	678	(683)
Borehamwood, Elstree & Radlett	817	(773)	598	(532)	1,415	(1,305)
Bushey	706	(688)	419	(370)	1,125	(1,058)
Central	386	(415)	368	(381)	754	(796)
Chigwell & Hainault	389	(402)	219	(205)	608	(607)
Clayhall	226	(-)	60	(-)	286	(-)
Cockfosters & N. Southgate	964	(981)	423	(415)	1,387	(1,396)
Cricklewood	123	(133)	148	(153)	271	(286)
Dollis Hill	149	(159)	155	(163)	304	(322)
Ealing	176	(184)	164	(168)	340	(352)
East London	184	(189)	260	(267)	444	(456)
Edgware	1,095	(1,138)	638	(621)	1,733	(1,759)
Finchley	909	(966)	840	(849)	1,749	(1,815)
Finsbury Park	143	(148)	160	(167)	303	(315)
Golders Green	486	(494)	340	(335)	826	(829)
Hackney	234	(243)	302	(316)	536	(559)
Hammersmith & West Kensington	102	(112)	139	(152)	241	(264)
Hampstead	449	(451)	450	(439)	899	(890)
Hampstead Garden Suburb	800	(813)	921	(904)	1,721	(1,717)
Hendon	903	(907)	834	(825)	1,737	(1,732)
Highgate	153	(148)	135	(124)	288	(272)
Ilford	1,192	(1,460)	714	(769)	1,906	(2,229)
Kenton	690	(743)	351	(363)	1,041	(1,106)
Kingsbury	265	(279)	212	(214)	477	(493)
Mill Hill	508	(495)	232	(201)	740	(696)
Muswell Hill	265	(286)	189	(200)	454	(486)
New	158	(177)	244	(257)	402	(434)
New West End	217	(237)	172	(146)	389	(383)
Newbury Park	414	(431)	266	(265)	680	(696)
Palmers Green & Southgate	425	(447)	227	(226)	652	(673)
Pinner	775	(779)	534	(510)	1,309	(1,289)
Richmond	113	(120)	94	(96)	207	(216)
St John's Wood	812	(848)	653	(652)	1,465	(1,500)
South Hampstead	328	(310)	171	(155)	499	(464)
South London	228	(236)	222	(229)	450	(465)
South Tottenham	132	(143)	109	(111)	241	(254)
South West London	65	(69)	57	(60)	122	(129)
Stanmore & Canons Park	1,137	(1,167)	1,261	(1,248)	2,398	(2,415)
Watford	105	(102)	39	(40)	144	(142)
Wembley	440	(465)	400	(411)	840	(876)
West Ham & Upton Park	172	(182)	175	(175)	347	(357)
Willesden & Brondesbury	192	(196)	177	(192)	369	(388)
Woodside Park	659	(662)	400	(393)	1,059	(1,055)
TOTAL	19,194	(19,594)	14,642	(14,424)	33,836	(34,018)



Membership of the United Synagogue at 31st December, 1992 (cont'd)

	Men (1991)		Women (1991)		Total (1991)	
Associate Synagogue						
Western Marble Arch	415	(437)	493	(545)	908	(982)
Affiliated Synagogues						
Barking and Becontree	119	(119)	64	(65)	183	(184)
Barnet	343	(332)	138	(118)	481	(450)
Catford and Bromley	273	(277)	127	(130)	400	(407)
Chelsea	82	(83)	38	(41)	120	(124)
Edmonton and Tottenham	38	(41)	26	(30)	64	(71)
Elm Park	44	(44)	23	(25)	67	(69)
Enfield	98	(100)	40	(35)	138	(135)
Harold Hill	49	(53)	32	(30)	81	(83)
Hemel Hempstead	42	(37)	65	(65)	107	(102)
Highams Park	167	(175)	120	(119)	287	(294)
High Wycombe	26	(25)	12	(13)	38	(38)
Hounslow	53	(57)	35	(34)	88	(91)
Kingston and Surbiton	227	(233)	194	(186)	421	(419)
Peterborough	12	(14)	10	(10)	22	(24)
Potters Bar	71	(73)	16	(15)	87	(88)
Romford	102	(118)	31	(33)	133	(151)
Ruislip	152	(148)	130	(123)	282	(271)
St. Albans	57	(62)	31	(27)	88	(89)
Staines	95	(102)	49	(48)	144	(150)
Sutton inc. Epsom	224	(235)	160	(162)	384	(397)
Wanstead and Woodford	543	(557)	237	(257)	780	(814)
Welwyn Garden City	82	(83)	40	(41)	122	(124)
TOTAL	2,899	(2,968)	1,618	(1,607)	4,517	(4,575)
Burial Rights						
Colchester	26	(27)	20	(16)	46	(43)
Luton	104	(109)	39	(38)	143	(147)
Reading	121	(125)	37	(40)	158	(165)
Southend and Westcliff	2	(3)	2	(2)	4	(5)
TOTAL	253	(264)	98	(96)	351	(360)
SUMMARY						
CONSTITUENT SYNAGOGUES	19,194	(19,594)	14,642	(14,424)	33,836	(34,018)
AFFILIATED SYNAGOGUES	2,899	(2,968)	1,618	(1,607)	4,517	(4,575)
ASSOCIATE SYNAGOGUE	415	(437)	493	(545)	908	(982)
BURIAL RIGHTS SYNAGOGUES	253	(264)	98	(96)	351	(360)
GRAND TOTAL	22,761	(23,263)	16,851	(16,672)	39,612	(39,935)

The Director
Department of Planning
London Borough of Barnet
Barnet House
1255 High Road
London N20 1JE

13 January 1993

Dear Sir,

Proposed Eruv

1. I have lived at this address since January 1963. I am familiar with the planning policies and planning history of the Hampstead Garden Suburb conservation area.
2. I write with particular reference to those aspects of the application which will particularly affect members of my household as pedestrians and drivers.
3. I have inspected, in your office, the November 1992 revised description of the application.
4. I imagine that your advice to the Planning Committee will include:-
 - 4.1 Reference to section 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990 under which the authority is required to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
 - 4.2 A reminder to the committee that local authorities, throughout the country, are paying particular attention to "cablescape" and are persuading cable undertakers to place cables underground and not overground in conservation areas. Indeed, I understand that there have been extensive negotiations in relation to cable TV not merely in an effort to reduce the "cablescape" effect in streets but, also to reduce the pressure for the placing of satellite receiving aerials on houses.
5. In the absence of any explanation for the erection of the poles in Wildwood Road, there can be no planning justification whatsoever for the introduction into the heath scene of an added item of street furniture which adds nothing to the safety or amenity or visual perception of the many people who use this particular stretch of road (between Wildwood Rise and Hampstead Way) for

leisure and normal transit purposes. The posts will do nothing practical. They will be an additional clutter to the street scene. They do not make any contribution towards the preservation or enhancement of the character or appearance of the area. On the contrary, any such installation must, inevitably, detract from it.

6. It has been argued that the poles and wire will not be obtrusive. Indeed, those proposed for this particular stretch of Wildwood Road are intended to be painted dark olive green whilst the wire is intended to be green plastic coated fencing wire. In this way, the proposers hope to meet objections that the poles, in this location, will be unsightly and obtrusive. Whilst there may be some marginal justification for the suggestion when trees are in full leaf the justification cannot apply during the Autumn, Winter and Spring periods when the landscape is predominantly brown at all levels or during Summer when the green colouring is inappropriate at ground level where the eye is concentrating on tree trunks which are predominantly brown. The posts will never, satisfactorily, merge into the background.
7. The total proposal includes several points at which posts will be placed adjacent to and wires will be erected over busy highways at busy junctions. I am particularly conscious of the pressures on the junctions at North End Road/Hampstead Way and Hampstead Lane/The Bishops Avenue. If it is, in fact, the case that the gates at junctions will not be intrusive, then they should not add to traffic dangers. There is, however, a clear danger. If the applicants are correct that thousands will benefit from the Eruv, then it must be the case that large numbers of driver will be interested, on a daily basis, in satisfying themselves of the integrity of the Eruv and, as they pass under the Eruv on weekdays, will be straining to see that the Eruv is, in fact, in place. This could indicate the introduction of a new and unnecessary road hazard at junctions which are already strained.
8. I hope that the authority will recognise that there is an unanswerable planning case against the installation of the stretch proposed between Wildwood Rise and Hampstead Way. I fear, however, that the matter will be surrounded by much emotion and that items irrelevant to planning considerations will also enter the discussion. If that is so and if the committee were (in my view wrongly) to take the explanation for the proposal as its justification then the committee should, first, consider the consequences of so doing. Once a precedent is established for a breaching of major conservation policies to meet a minority need, there will be no justification for the refusal, on conservation policy grounds, of other minority proposals whether they are related to religion or not. There is no means of knowing now what the future may hold in terms of minority requirements but there can be no doubt that if this particular proposal is allowed, others will emerge which will, inevitably, encroach upon the character and

appearance of the conservation area which it will become increasingly difficult to protect.

9. I urge the Council to refuse permission in respect of the aspects of the Eruv to which objection is made in this letter.
10. I would be very grateful if you would, please, send me a copy of the agenda paper for this item and inform me of the outcome. For that purpose, I enclose postage stamps to the value of £1.50 (which I hope will be more than enough to cover postage costs).

Yours truly

MICHAEL G MAX

cc: Planning Committee Chairman
Councillor Frank Davies
Councillor Mrs Mary Phillips
Councillor Roy Shutz

bcc: Miss Eileen Whelan

The Chief Planning Officer
The London Borough of Barnet
Barnet House
1255 High Road
Whetstone
London N20 0EJ

14 July 1993

Dear Sir,

Proposed Eruv

I refer to the revised application dated 7th June 1993.

1. Pages 1 and 2 of the proposal give a background and suggest benefits to a section of the community. That background and those benefits are irrelevant to a Planning Application. They are there to create sympathy for and a justification of the proposal and seek to take advantage of the current concern to satisfy every whim of every minority.

As the introduction has been lodged, it is open to comment. To that extent, I wish to make these points:-

- I am Jewish but not merely do I do not support the concept of an Eruv - I oppose it.
- I am member of the United Synagogue and as such resent inference that the application has the support of all members of the United Synagogue. It does not.
- The Eruv proposed is very large and goes totally beyond the original continental and village based areas to which the concept had some relevance in the past.
- Large numbers of people to whom the Eruv is an anathema live within the large area involved. Their mental anguish is at least as important to them as the absence of the eruv is to its proponents but is nevertheless dismissed by those proponents. They see the area as one in which a large variety of people of a vast number of nationalities and religions have learned to go to school and live together. The creation of a special area which will encourage "colonisation" by a particular group of people is objectionable and unsuitable for a multi-nationality, multi-racial and multi-religious country.
- It is unfortunate that those proposing the Eruv have chosen to achieve validation for it simply through the planning and public works process. The initial public works process led

to no publicity. The planning process did, eventually, lead to some publicity. The matter has never received a proper and public airing as it should do having regard to the major implications in it.

- The constituent parts of an eruv are clearly flexible and can differ from age to age. If nylon cord and motorways are alright now, they must replace other things that were relied upon centuries ago. Surely a way can be found to define an area without the need for civic ratification of physical features which cause so much offence and mental concern? The matter has given me many sleepless nights.

- 2.1 Lampposts should not be used in the manner proposed as supports for a nylon mono-filament wire. The wire will be dangerous to those involved in the maintenance of the street lighting. The wire will be subject to dangers of breakage during the course of that process. In respect of the wires which run across roads and along roads, the attention of those drivers who might be interested in the integrity of the Eruv will be distracted. No additional distractions should be allowed at some of the busy junctions which are involved.
- 2.2 If, as I suspect, the filament will be broken and will require constant maintenance then, the need for lorries, with personnel lifting equipment will be required, frequently, at junctions some of which are very busy. The frequent carrying out of maintenance at those junctions is an unnecessary and undesirable additional source of danger.
- 2.3 What dangers will be posed, in the event of breakage of the filament by the trailing ends pending reinstatement?
3. I now turn to the specific planning issue. If one disregards the introductory explanations, and concentrates only on the structures proposed there is no planning ~~grant~~ to justify the structures which have no relevance other than in the minds of some people distant from those poles whose reliance upon the integrity of the poles and nylon filament enables them to breach some self imposed limits in ignorance, as to whether or not the Eruv boundary is intact at any relevant time. ground
- 3.1 Apart from the state of mind of those behind the proposal, there is no justification for the post or wires and those proposed in the conservation area do nothing to improve the conservation area. They are unnecessary in the street scene. They give no direct benefit as does a street light or a telegraph pole and the proposal to erect these overhead structure comes at a time when every encouragement is being given to put cables under ground in order to avoid overhead clutter. The time is not far away when the last of the few remaining telegraph poles will be removed and all the cables will have been put underground and, at that point,

all the posts and, particularly those proposed in Wildwood Road, for instance, will become even more noticeable.

- 3.2 The proposal will lead to a sense of containment which operates as a separation of the Heath Extension from the Heath proper which is unacceptable.
- 3.3 There is no justification for the posts or wire in planning terms. The placing of the constituents of the eruv boundary constitutes a dangerous precedent which will be called in aid of other ethnic requirements for a variety of proposals (as yet unimaginable) and which it will be difficult to resist.
- 3.4 In Wildwood Road the wire itself, in order to pass direct from lamppost to lamppost will at some point have to pass through foliage. Is it proposed that in order to assist the integrity of the filament, the informality of growth of any intervening tree is to be restrained?
- 4. The narrow planning argument seeks to avoid the real issues. The real issues do require debate and their long term implications must be considered. It is a pity that they are not being considered and that the Council is being pressed on this major matter of principle by a planning application involving proposals the constituent parts of which are all pressed by their proponents as unobjectionable in themselves.
- 4.1 If the only justification for the eruv is in the minds of a limited number of people then, just as relevant is the effect of the erection of the eruv on those who see it as objectionable. I have many sincerely held objections to it based on my views of religion, history and theocratic inference with civil government. A letter of objection to a planning application is not the place to make those objections but it is in those areas that the debate on this application should take place. I and many others, resent that it is being stifled by protestations that the application is merely a matter of planning concerning the placing of a few insignificant and unobtrusive posts and filament wire. The application relates to much more fundamental matters and is very hurtful to many - including me.
- 5. The Council should not be swayed by the petition of January 1993. Those who object to it have not been given a similar opportunity to voice their views. The Council should, in the light of a full understanding of the implications, sound out those views.

Yours truly

MICHAEL G MAX

cc: Chief Executive
Cllr Roy Shutz

TOWN & COUNTRY PLANNING ACT 1990
APPEAL OF UNITED SYNAGOGUE ERUV COMMITTEE

PROOF OF Philip Kossoff on behalf of thirty four residents living across the Borough of Barnet whose names and addresses are set out below.

My status in this matter

I am a retired solicitor. I practised for over 30 years at 87 Regent St.W1 I sold my practice upon retirement in 1987. I have experience of planning matters and also of the other areas of law having a bearing on this application. I have lived in Barnet since 1959.

I give my evidence on behalf of thirty four residents living across the Borough of Barnet whose individual names and addresses are set out . This group includes two other senior solicitors one of whom is a District Judge and three senior Architects one of whom is a former Chairman of the Hampstead Garden Suburb Trust , as well as twenty seven other long standing borough residents. Our group has since June 1992 sought to summarise and give voice to the public opposition that has developed to this proposal.

My evidence has been set out in the statement of case that has been lodged by me and the rest of my proof follows its terms, as amended or added to herein.

Summary of evidence

In the opening paragraph I describe the proposal. I here correct a clerical error in the Statement of Case when I referred to 'each post' instead of 'the posts' as 'carrying 947 metres of wire' .

In para 1.1 I set out the grounds for refusal by the Planning Committee of the Barnet Borough Council and adopt them.

In paras 1.2/1.6 I set out other matters of planning policy which dictate refusal viz:

1.1a The proposal also appears to conflict with the policy M6.2 UDP ' to improve the pedestrian environment and to minimise the risk of accidents to pedestrians etc.

1.2 The detracting from quality of the environment (referred to in UDP G1) affects each of the public highways involved, and this arises from the physical impact upon the environment which is indistinguishable from the subjective reaction of highway users to to such impact. I refer to the purpose of planning legislation, being;"to regulate the development and use of land in the public interest" PPG 1 para 23.1.3

1.3 I set out the nature of the incompatibility of the Eruv structures, with

the character & environment (referred to in UDP G18),in respect of the highways in residential areas and indicate how it arises:

1.4 I deal with the position of the individuals with proposed posts approximately adjacent to their private property boundaries (frontagers) who have individual interests and an interest as a group which calls for protection as "part of the public interest as a whole "

1.5 I point out that, the grant of planning permission for the permanent establishment of poles and wires on publicly dedicated highways, to form a boundary having symbolic religious significance for the benefit of a section of the public having a particular religious affiliation , involves a fundamental change of planning policy and therefore the range of material planning considerations extends to all considerations appertaining to the desirability of such a change of policy.

1.6 I set out the law, rendering the proposed structures criminal and an unlawful obstruction of the footway at the site of every post, and point out that it is contrary to public policy to grant planning permission.

1.7 I summarise the objections set out in the Barnet Controller of Development Services Report and Supplemental Report (hereinafter called the report) dated the 21st. Feb. 1993 and submit that the weight of these objections (having regard to the public nature of the amenity concerned) , provides factual support, for the contention that the development fails to accord with the purpose of planning legislation, which is,"to regulate the development and use of land in the public interest"(PPG 1 para 23- also see PPG para 42.).

I now add:

I apply the like argument to the written objections to the appeal consultation and to the evidence given in opposition to Appeal .

I add further that ,although all the representations of the public are material considerations as a matter of law ; as a separate and specific matter of law, the Local Authority, and therefore this tribunal ,is obliged to take into account the representations received from the public pursuant to the consultation in respect of the character and appearance of a Conservation Area. See Planning and (Listed Building and Conservation Areas Act 1990 ss67(7),&3(1)]. Ref Page 2-23265 T.P. Encyclopaedia attached. In the following paragraph I set out the application of the principle that public land is for public benefit.

I add further to my proof as follows: In the circumstances of this case the applicants' need" is only a material consideration if it amounts to a degree of need which involves 'personal hardship'. Any 'hardship' involved in this case is one of personal choice and would not therefore, within the ordinary meaning of the term, be described as 'personal hardship' .

Appendix 1: I set out the law rendering the proposed structures criminal and an unlawful obstruction of the footway at the site of every post, and specify the reasons why in practice, at this time, it is impossible to grant the planning permission as applied for.

Documents which may be referred to

The report.

We request Barnet to have available the background papers of the case at the hearing, for access, if required, to the documents summarised by the officers and for access, if required to any of the documents therein and the letters written by the objectors in response to the Appeal consultation

UDP

PPG 1

The following may be referred from Barnets file:

All correspondence with the City Corporation and the Eruv Committee and others having a bearing upon the position of the City Corporation in this matter. .

All correspondence with the Dept. of Transport and others relating to the matters set out in Appendix 1

See also attached documents.

This proof is submitted on behalf of the following:

Mr. Jack & Dr. Dora Black of 9 Park Ave. NW11

Gillian Cohen 55 Lincoln Rd. N2 9 DJ

Freddie & Tessa Cohn 53 Gainsborough Road London N.12

Mr. & Mrs Comberti 11 Reynolds Close NW11

Raymond & Sandra Greenberg 1 Foscote Rd. Hendon London NW4

Mrs Jackie Edelman 10 Mossborough Close Moss Hall Grove N12 8PF

Mr & Mrs Hodgson 1 Wildwood Terrace NW3

Philip & June Kossoff 16 Park Drive N.W.11 (for reply)

Mrs Helen Kraemer 8 Basing Hill NW11

Paul & Jeanette Kriwaczek 12 Wessex Gardens NW11

Alfred & Rima Lester 5 Reynolds Close NW11

Cecil Lush 4 Harman Drive London NW2

Bill & Miriam Mazower 16 Wessex Gardens NW11

Mr & Mrs D Pevsner 5 Wildwood Grove NW3

Mr & Mrs T Pevsner 13 Wildwood Grove NW3

Paul & Gwen Schweitzer 20 Park Drive London NW11

Sandra Shavik 4 Princes Close Edgware HA8 7QB

Mr. Ian Sheratte and Mrs. Offra Sheratte 2 Beech Vale Close N12

John & Tina Spencer 20a The Park London NW11

Sheila Sullivan 69 North End Road NW11

by. *Philip Kossoff*

1 Correspondence relating to
Golders Hill Park & City Corporation

2 Correspondence relating to Dept of
Transport.

3 Extract from Encyclopaedia of
Highway Law

4 Extract from Encyclopaedia Judaica
and Notice of Rabbis.

5 Extract from
Encyclopaedia of Town Planning Law

6

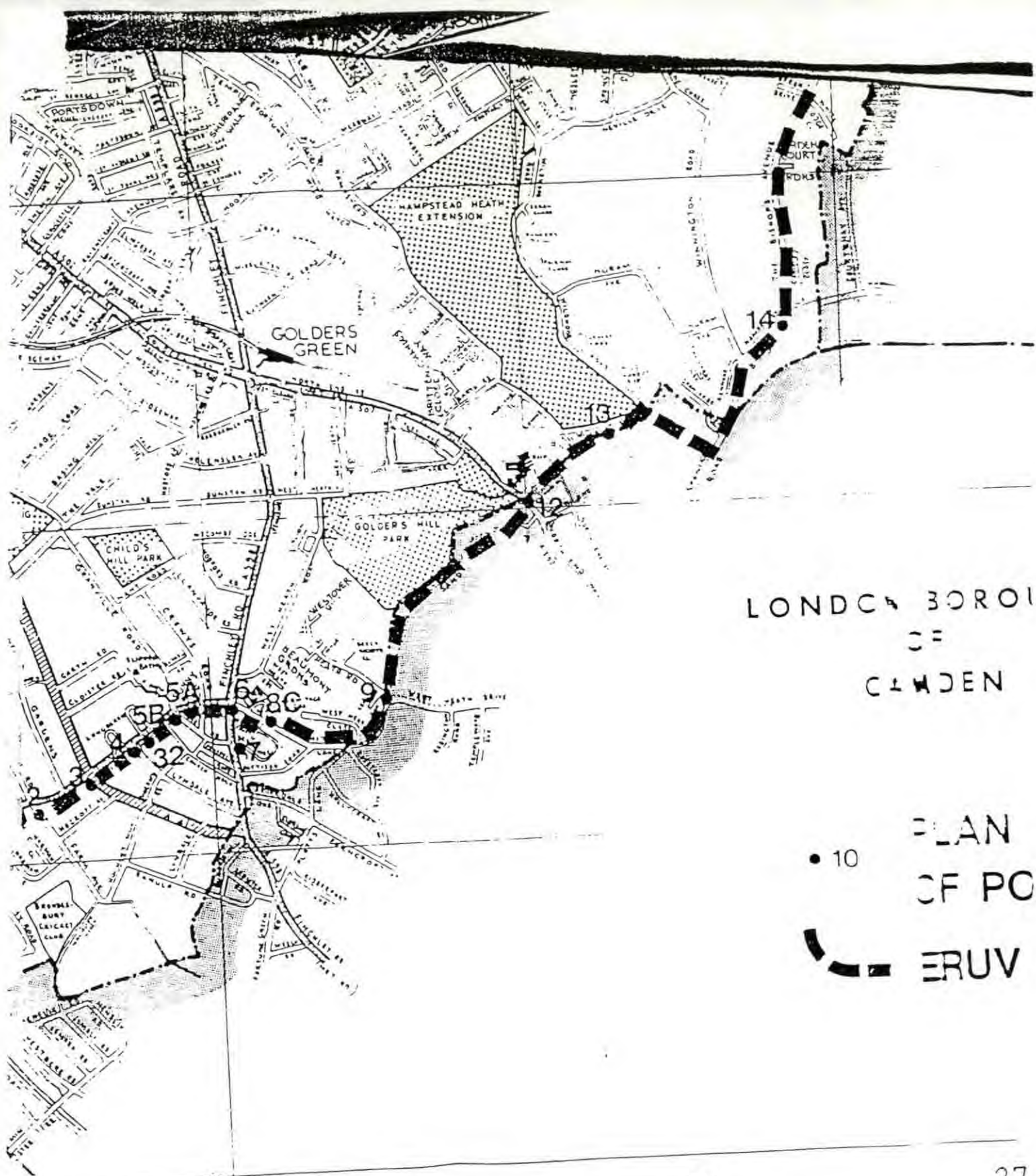
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LONDON BOROUGH OF
CLAYDEN

PLAN
OF PC
ERUV

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**CORPORATION
OF LONDON**

The Superintendent of Hampstead Heath

Paul Canneaux RHB, Dip Hort (Wiscly)

Direct Line

Aztec House
397-405 Archway Road
London N6 4EY
Facsimile 081-348 1677

Exchange 081-348 9908

London Borough of Barnet
Barnet House
1255 High Road
Whetstone
London
N20 0EJ

- 7 - 1992	
JDK	ACTHINFO

Our Reference
Supt/HH

Your Reference

Date
2 April 1992

Dear Sir,

Proposed ERUV - Hendon and Golders Green Area

Thank you for your letter dated 30 March 1992. While I have some sympathy for those who wish to have the benefit of the ERUV I have to say that there is not the remotest possibility of such a restriction being permitted on the Heath. The Acts of Parliament governing the Heath prohibit enclosures unless for the benefit of the wildlife or vegetation or are there as part of the management of public recreation. Furthermore, such a proposal would inconvenience the public at large and if such a post and wire boundary were ever erected it would be a maintenance commitment I would not undertake. It would not be possible for anyone else to undertake that commitment on our behalf. In the event of personal injury or accident involving this fence, the Corporation could not be held responsible. This also raises issues regarding partially sighted or blind persons. If a dog ran into this wire, resulting in vets bills, again the Corporation could not be held liable. All in all, the suggestion is simply impractical.

As regards the fencing on the southern boundary of Golders Hill Park this will be replaced with a more secure fence as soon as the funds are available as part of routine maintenance. There is also the question of the appearance of a post and wire fence in a Conservation Area. It would surely be unlikely to find favour with the Planning Department. Many thanks for informing me of the proposal.

Yours sincerely,

Paul Canneaux

Paul Canneaux
Superintendent of Hampstead Heath

23 APR 1992

23 APR 1992

Quoted Lat

Hampstead Heath

CC



The Superintendent of Hampstead Heath

Paul Canneaux RHIS, DipHort(Wiscov)

Direct Line

(2)

Aztec House
397-405 Archway Road
London N6 4EY
Facsimile 081-348 1677

Exchange 081-348 9908

Our Reference
Supt/HH

Your Reference

Mr A. Perrin
Roman Investments Ltd
34 Lyttelton Road
London
N2 ODQ

Date

7 May 1992

Dear Mr Perrin,

Thank you for your letter of 15 April and for setting out the points I misinterpreted. However, my view of the matter remains the same, basically that the proposal is inappropriate for the Heath. I could not agree to the posts being erected on the Heath as they would constitute an unnecessary obstruction. If they were a direct benefit to the Heath itself or for the benefit of the general public at large then obviously I would need to think again, but even so I would still be very reluctant.

The Golders Hill Park fencing is already in my capital programme for renewal and there is no case for it to be done any sooner than planned. I intend to replace the existing wooden fencing with steel railings as they were previously used and would blend in with the existing gates.

It would not be possible to pass to any other body the responsibility for inspection and repair of either this fence or the poles you refer to as there is no authority vested in the Corporation to make any such agreement.

I appreciate your consideration regarding my budget. However, unlike previous authorities, the Corporation has made ample provision from its own private funds to run the Heath so that funds, when justified, are usually forthcoming.

Yours sincerely,

Paul Canneaux
Superintendent of Hampstead Heath



3
The Superintendent of Hampstead Heath

Paul Canneaux RHS, DipHort(Wisley)

Direct Line

Aztec House
397-405 Archway Road
London N6 4EY
Facsimile 081-348 1677

Exchange 081-348 9908

Our Reference
Supt/HH

Your Reference

Date
14 August 1992

Dear Mr Kossoff,

Proposed Eruv

Thank you for your letter of 12 August and I note the points you make.

The situation as far as the Heath is concerned in that I have refused permission for the Eruv to be sited on the Heath, whether it be Golders Hill Park or any other part of the Heath. Indeed, several members of the Jewish community have indicated to me that they do not wish the proposal to go forward. A major factor in my refusal was the fact that the Eruv was to be a permanent feature. Also the point you make about other minority groups seeing this as a green light for their own particular view to be similarly expressed was another concern of mine. All in all it was felt that the proposal was entirely inappropriate for the Heath as public open space. I believe the latest position regarding the poles and their siting is to put them on public highway land ie. at the back of the footpath in Wildwood Road, This is a matter entirely for the London Borough of Barnet who are, I think, still considering the matter.

Yours sincerely,

Paul Canneaux
Superintendent of Hampstead Heath



LONDON BOROUGH

4

DIRECTOR TONY WILLIAMS CEng MICE

Planning Group
Barnet House
1255 High Road
Whetstone
London N20 0EJ
Tel No. 081 446 8511

TECHNICAL SERVICES

Phillip Kossoff
16 Park Drive
London NW11 7SH

Our Ref: P/SS/Eruv
Contact: S Slack
Ext: 4622
Date: 21 September 1992

Dear Mr Kossoff

Re: Town and Country Planning Act 1990
Proposed Eruv

I refer to your letter of 17th September 1992

As yet no amendments have been made to the Eruv boundaries as a result of the City Corporations decision. Should any amendments be made, then further consultations will take place should the application remain unamended, then it will be considered as so, whether such a scheme could be implemented or not.

Yours sincerely

S Slack
Development Control

ROMAN
INVESTMENTS
LTD

34 Lyttelton Road London N2 0DQ
Tel: 081-458 0036 Fax: 081-458 0096

Planning Group
Barnet House
1255 High Road
Whetstone
London N20 0EJ

Attn: Mr G C Brown, Chief Planner

22 September 1992

Dear Mr Brown,

Re: ~~Proposed~~ Eruv: Golders Hill Park

Thank you for yesterday's letter relating to Golders Hill Park.

The City Corporation, via the Superintendent of Hampstead Heath, have not "refused" permission for the Eruv to include Golders Hill Park.

What they have refused is permission for the United Synagogue to erect their own perimeter fence on the Southern boundary of the park, which would then allow the park to be included in the Eruv.

They have indicated however that they have planned and budgeted for a brand new perimeter fence along Sandy Lane which will do the job adequately. Indeed, when we offered a "contribution" towards their expenditure, we were assured that none was necessary!

In the interim period therefore, Golders Hill Park will be excluded. The alternative route for our Eruv perimeter, runs around the Northern perimeter and utilises existing fences which are of an acceptable standard for the Eruv.

As far as the Planning Application is concerned therefore, I believe that no amendment is necessary in relation to this section of the boundary. As far as the "carrying Jewish public" are concerned, our advice and instruction will be to omit the Park until the Corporation erect their new fence.

I do hope that this clarifies the matter.

Your ref: P/GCB/SS Eruv

PLANNING GROUP
REC 23 SEP 1992
REF 10.....
COPY TO

DM p-dwains
GB 23/9

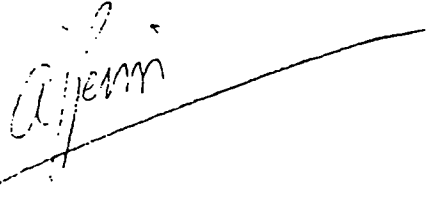
(5)

(da)

I enclose a copy of Mr Canneaux's letter to me of 7th May 1992
which covers this issue.

Kind regards,

Yours sincerely,


Alan Perrin
United Synagogue Eruv Committee



2



THE DEPARTMENT
OF TRANSPORT

C7/01A

2 MARSHAM STREET LONDON SW1P 3EB
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TELEX 22221 DOEMAR-6162
DIRECT LINE 071-276
SWITCHBOARD 071-276 3000
GTN 276

London Borough of Barnet
Directorate of Technical Services
Barnet House
1255 High Road
Whetstone
London N20 0EJ
For the attention of Mr G Smith

My Ref:

Your Ref:

E/GS/YP/410.38

2 March 1992

ENGINEERING SERVICE

REC'D	- 6 MAR 1992		
CES			
GROUP	SECT	OFFICER	ACT/H
(3)		JD/K	

Dear Mr Smith

HENDON AND GOLDERS GREEN PROPOSED ERUV

Thank you for your letter of 27 February concerning the proposed Eruv.

Before considering this matter, I need some more information from you, please:-

- A map showing the exact area bounded by the Eruv.
- The detailed design of the posts on which you propose will support the wire and the proposed height of the wire above each road.
- The exact location of each post within our highway boundary.
- Details of any locations where you propose to run the wire alongside trunk roads.
- Details of the method to be used to sling the wire across our trunk roads and for its maintenance. I suggest that you discuss this matter with Arthur French before replying.

When the proposed Eruv was first raised with us some time ago, we indicated that our preference would be that the wire crosses the roads where it can be supported on a structure, such as an over-bridge. It does not appear that this request been taken into account in designing the boundaries of the area.

I am afraid that we are not willing to allow our lighting columns to be used to support the Eruv as shown on some of your sketches

I note that you have included some borough road sites in the sketches, but we are obviously only interested in those on trunk roads.

As soon as you have supplied this information, we will consult our policy and legal sections, because, as far as I am aware, yours is the first proposed Eruv affecting trunk roads in this country.

Yours Sincerely

S.D. Crutchlow



THE DEPARTMENT
OF TRANSPORT

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SWITCHBOARD 071-276 3000
CTN 276

Mr P Skinner
LB Barnet
Barnet House
1255 High Road
Whetstone
London N20 0ET

My Ref:

Your Ref:

12 January 1993

Dear Mr Skinner

I refer to the planning application made by the United Synagogue Eruv Committee.

I enclose a copy of a letter we have just sent to the Eruv Committee from which you will note that the Department does not propose to intervene in the planning application. I should, however, draw your attention to the advice we have received from our lawyers that the Department has no power under highways legislation to permit posts to be erected for the purposes of the proposed eruv on land which retains highway status. Therefore, unless, as the above letter says, the Eruv Committee wish to proceed on the basis that overhead wires crossing highways are to be suspended from positions off the highway, they may wish to consider, if planning permission is granted pursuing the proposal via section 247 of the Town and Country Planning Act 1990 for the stopping up of those parts of any highway in which it is proposed to erect supporting posts.] This route will, of course, need to be pursued via the Council.

I am sending a copy of this letter together with a copy of Mr Mance's letter to Ms McGurran in your planning department. I am also copying this correspondence to Mr G C Brown, Chief Planner, Development Control and trust that he will accept this as a reply to his letter of 5 January.

Yours sincerely

R DEVONPORT
London Network Management Division

ENGINEER
12 JAN 1993
PROS.
12 JAN 1993

TOTAL



THE DEPARTMENT OF TRANSPORT

JM.D106

Alan Perrin Esq BSc
Albert Villa
298 Golders Green Road
London
NW11 9PY

London Regional Office
3 MARSHAM STREET LONDON SW1P 3E
TELEX 22221 DIRECT LINE 071-276
SWITCHBOARD 071-276 1000
CITN 276

Mr Ref

1001 Ref January 1993

Dear Sir

HENDON AND GOLDERS GREEN ERUV

I understand that you act for the United Synagogue Eruv Committee.

This Department received a copy of the public consultation letter issued by the London Borough of Barnet on 7 September 1992 which enclosed a copy of your proposal dated June 1991 in connection with your clients' planning application to establish an eruv in the Borough. The Department is concerned as the highway authority for the trunk roads which would be affected by the proposed eruv.

The Department does not propose to respond to the local authority's public consultation letter. My purpose in writing is to remind you that there is no nexus between the Town and Country Planning Act 1990 and the Highways Act 1980. It is an offence under section 162 of the Act of 1980 to place any rope or wire across a highway so as to be likely to endanger persons using the highway; section 133 enables a highway authority to recover the cost of reinstating damage to footways by excavations or other works; section 143 empowers a highway authority to require the removal by a specified date of structures (defined including any post capable of causing obstruction) from a highway; and section 178 makes it an offence to place any cable or wire over, along or across a highway without the consent of the highway authority, which may be given conditionally.

I would be glad to discuss with you or your clients whether, and on what conditions, a licence under section 178 of the Act might be given. However, I am advised that the Department has no power under highways legislation to permit posts to be erected for the purposes of the proposed eruv on land which retains highway status. Unless your clients are content to proceed on the basis that overhead wires crossing highways are to be suspended between buildings, posts or other erections off the highway, they may wish to consider, if planning permission is granted, whether to apply to the Secretary of State for an order under section 247 of the Town and Country Planning Act 1990 to be published providing for the stopping up of those parts of any highway in which it is proposed to erect supporting posts.

R Devenport Esq
London Network Management
Division
Department of Transport
London Regional Office
Room C7/02, 2 Marsham Street
LONDON SW1P 3EB

Mr Penhey
2510

HSP.6640.JMP/CP

²⁶
25 January 1993

Dear Sir

Hendon & Golders Green Eruv

I write in response to your letter of 12 January addressed to Mr Skinner. You indicate that the Department has no power to permit the posts to be erected.

I consider that a power does exist. Section 50 of the New Roads and Street Works Act 1991 enables the street authority to grant licences for apparatus to be placed in the street.

My assistant, Mr Penhey, has discussed the matter over the telephone with your legal adviser, Mr Thomas. I understand that your Department contends that the posts are not "apparatus", on the grounds that they are symbolic in nature, rather than functional. For the reasons given below I cannot, I regret, accept that the posts are merely symbolic or that, in any event, the distinction which you draw between symbolic and functional items has a bearing on whether they may properly be described as apparatus.

I think it is common ground between us that neither the 1991 Act nor the Highways Act 1980 provide any useful definition of the word "apparatus". Mr Thomas has been kind enough to let me have the report of a decided case in which the meaning of the word was considered. The Court was of the view that the word should be given its natural and ordinary meaning. Regard was had to a dictionary definition: "an assemblage of appliances or materials for a particular use". The posts are certainly materials. It is clear that they have a use. They serve to assist in demarcation of a boundary. This is an actual, and not a notional, boundary. The posts and wires will not, of course, prevent the passage of traffic. However, it is not a necessary concomitant of boundary definition that the objects or structures intended to show the line of that boundary should be so constructed as to form a physical barrier.

Cont'd

-2-

Even if the symbolic or functional nature of the posts is a relevant factor (and this is not conceded) your Department's position appears to be as follows. The authority for the placing of the wires across the highway will be a consent under Section 178 of the Highways Act. This Section relates to "any overhead beam, rail, pipe, wire or other similar apparatus". A "wire" is therefore "apparatus". There appears to be no requirement that the wire should have a practical function. Your Department is willing to consider granting consents for wires which you say are symbolic but which are nevertheless apparatus. It is surely inconsistent for you to argue that posts are not apparatus because, in your view, they are symbolic.

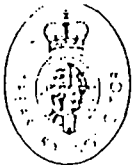
It ^{will} ~~would~~ be appreciated that I refer to Section 178 not because it authorises erection of the posts but because it assists in defining "apparatus". If overhead beams, rails or pipes are apparatus, then it seems clear that posts must also be apparatus. They are, effectively, similar structures which are placed vertically, rather than horizontally.

I hope that, in the light of the foregoing, you are able to agree that Section 50 of the 1991 Act does in fact provide the appropriate power to licence the installation of the posts. I look forward to receiving your confirmation.

Yours faithfully



for Controller of Legal Services



LEGAL ADVISER
DEPARTMENT OF TRANSPORT

MARSHAM STREET
LONDON SW1P 3EB

Telephone: 071-276 5754

OFFICE OF THE DIRECTOR			
RECEIVED: 25 FEB 1993			
Please address reply to Room P3/050			
CE	DE	CA	BPU
F&R		P&S	
ACTION: 1 2 3 4			
FOR REPLY BY: 18 MAR 1993			
REFERRED TO		DATE	

The Controller of Legal Services
London Borough of Barnet
Town Hall
The Burroughs
Hendon
London NW4 4BG

Your Ref: HSP.6640.JMP/CP

23 February 1993

Dear Sir

HENDON AND GOLDERS GREEN ERUV

1. Since it is concerned with purely legal issues, I have been asked to reply to your letter of 26 January to Mr Devonport.
2. At the time when this matter first arose, careful consideration was given to whether the eruv posts could be regarded as apparatus for the purposes of section 181 of the Highways Act 1980 or of section 50 of the New Roads and Street Works Act 1991, which at that time was about to be brought into force.
3. Like you I could not see that any distinction could be drawn between the two pieces of legislation so far as the meaning of "apparatus" was concerned and I agree with you that the question is a difficult one and there is no clear-cut answer, but the view to which I came and which I still hold was that an eruv post would not be apparatus for the purposes of either the 1980 Act or the 1991 Act. To explain my reasons, I cannot do better than enclose a copy of an extract from views which I gave at the time.
4. Whilst accepting that there is some logic in the point which you make in the fifth paragraph of your letter, but I do not find it wholly compelling. Section 178 recognises that a wire across a road may be apparatus. I do not think that it means that, whatever the circumstances in and the purpose for which a wire is suspended across a road, it is necessarily apparatus, although doubtless those framing the section envisaged that nobody would want to hang a wire across the street unless it was going to serve some purpose in the physical world. A wire across a street could undoubtedly be apparatus - a telephone wire is an obvious example - but would not necessarily be so. I therefore find it difficult to conclude that, because the legislation recognises that a wire can be apparatus and that a wire may serve a purely symbolic function as marking the boundary of an eruv, it necessarily follows that an eruv pole is apparatus within the meaning of the Act.
5. As I pointed out in my written advice, the Act talks about

apparatus and structures. An eruv pole is undoubtedly a structure, but if it is apparatus then anything in a street can be regarded as apparatus whatever the reasons for putting it there.

6. All things considered, my advice to the Department remains and they have accepted that, if the eruv is to go ahead, the appropriate statutory basis for authorising the eruv poles should be Part VIIA of the Highways Act 1980.

7. I understand that a decision is to be taken on the planning application later this week and I await the outcome.

Yours faithfully

N.C. Thomas

N C THOMAS
For the Legal Adviser

There is however no specific power to authorise the placing of posts in the highway in order to support the wire which marks the boundary of the eruv. If the posts could be placed on private ground adjoining the highway, the Secretary of State could grant a licence to suspend the wire between them. Likewise, if the wire were suspended between buildings on either side. When we spoke, you said that you had in mind section 181 as the enabling power for the placing of the posts, on the basis that they could be regarded as apparatus. Certainly section 181, when it was originally enacted, was not aimed at this sort of thing. DOE Circular Roads 62/71 (which relates to sections 41 and 42 of the Highways Act 1971 the statutory predecessors of sections 181 and 182 of the 1980 Act) states that section 41 provided a code under which highway authorities might licence the installation, retention and maintenance of apparatus (pipes, cables, etc) not belonging to statutory undertakers or sewerage authorities in or under the highway. It was not recommended that the provisions of section 41 should be used to licence common street furniture such as AA or RAC telephone boxes. The circular gives as examples of what can be licensed pipes required for a central heating system on a housing or industrial estate, or a water supply to a farm and cables required for a television relay. Although it may not have been intended that section 181 should be used for posts to hold up wire to mark the boundary of an eruv, it would be lawful to use it for that purpose if that were within the proper interpretation of the statute.

The word 'apparatus' is not defined in the 1980 Act, except that section 329(1) provides that apparatus includes any structure constructed for the lodging therein of apparatus. Section 162 appears to regard a wire (eg a telephone wire) as capable of being a form of apparatus.

The statutory definition however draws a distinction between structures and apparatus. Section 143 specifically recognises a post as a form of structure. Section 143(4) provides that 'structure' includes any machine, pump, post or other object of such a nature as to be capable of causing obstruction. A machine or a pump could be apparatus on any reasonable meaning of that expression. It therefore seems that there are things which could be both a structure and apparatus. Section 144 provides that a local authority may erect flag-poles, pylons and other structures on any highway in their area for the purpose of displaying decorations. That power, which originated with the Local Government (Miscellaneous Provisions) Act 1976, would not have been necessary as a power authorising an obstruction of the highway if flag-poles could be regarded as apparatus within the meaning of section 181 which, has as been seen, originated from the 1971 Act.

In considering whether a post can be 'apparatus' within the meaning of section 181 regard must accordingly be had to the original and natural meaning of the word. Some assistance is to be derived from the Scottish case of *Brebner v British Coal Corporation* decided by the Second Division of Inner House of the Court of Session in July 1988. In that case the Lord Justice-Clerk approved a dictionary definition of 'apparatus' as 'an assemblage of appliances or materials for a particular use'. He held that, in the context of the Mines and Quarries Act 1954, a ladder with a defective rung in a coal mine was apparatus. The view was taken that, in the context of a statute concerned with safety of miners, a wide interpretation was appropriate. Another dictionary definition (Concise Oxford) it is that apparatus means 'mechanical requisites, an appliance for doing something'. Although there are no doubt sound religious and doctrinal reasons for the erection of gateways to an eruv, such things achieve no practical result whatever. Their significance is symbolic only. I therefore have difficulty in regarding them as 'apparatus' within the meaning of section 181.

Section 181 authorises the giving of licences for the placing of apparatus 'in or under' a highway. In my opinion this would include a licence to install apparatus on the surface of a highway. The expression 'in or under' is also used in section 185 which permits the provision and maintenance of refuse or storage bins 'in or under a street'. In this context, it is clear that a bin can be in a street if it is simply resting on the surface of the road or attached to another highway structure such as a street lamp.

Section 181 will, however, be repealed with effect from 1 January 1993 and replaced by new provisions in the New Roads & Street Works Act 1991. Section 50 enables a 'street authority' to grant a licence permitting a person to place, or to retain, apparatus in the street and thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it. Again apparatus is not defined other than to include

any structure for lodging the apparatus in it or for gaining access to apparatus. (See section 105(1)). Section 89(3) also extends apparatus to include a sewer, drain or tunnel. Again, I do not think that when this legislation was drawn up it was contemplated that the powers could be used to authorise what is now proposed. Any doubt about the meaning of the word 'in' is overcome by section 105(1) which provides that, in a context referring to works, apparatus in a street includes a reference to apparatus 'under, over, across, along or upon it'.

It seems to me, however, that for the reasons already given in respect of the existing legislation posts in the road to mark an entry point to an eruv will not be 'apparatus' within the meaning

of the 1991 Act.



THE DEPARTMENT
OF TRANSPORT

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DIRECT LINE 071-276 6224
SWITCHBOARD 071-276 3000
GTN 276

LR035/N5090/8/06

My Ref:

Your Ref:

Mr Philip Kossoff
16 Park Drive
London
NW11 7SH

Friday 5 March, 1993

Dear Mr Kossoff

RE: PLANNING APPLICATION FOR AN ERUV IN BARNET

Thankyou for your letter of 18 January 1993 regarding the planning application for an eruv submitted by the United Synagogue Eruv Committee.

Having shared many of your concerns, the Department of Transport advised both the London Borough of Barnet and the United Synagogue Eruv Committee that the application was unacceptable in its existing format.

As you are probably aware, the proposal has recently been turned down by the committee of Barnet Planning Authority. Therefore, as this Department has already given its position on this matter to the London Borough of Barnet, any further representations on your part should be made directly to the Borough.

Thankyou for the interest that you have shown in this matter.

Yours sincerely,

S. Bourn

STEPHEN BOURNER
London Network M
Area Team 1 (Nor

The Legal Adviser
Department of Transport
Room P3/050
2 Marsham Street
LONDON
SW1P 3EB

Mr Penhey
2510

HSP.6640.JMP/CP

NC THOMAS

15 March 1993

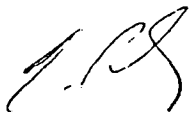
Dear Sir

Hendon & Golders Green Eruv

Thank you for your letter of 23 February. I note what you say but remain of a contrary view.

At its meeting on 24 February last, the Council's Town Planning and Research Committee refused to grant the planning permission applied for. However, should the applicants appeal against the refusal and be successful and should your view on the powers to erect posts not successfully be challenged, the Council would probably utilise the provisions of Part VIIA of the Highways Act 1980.

Yours faithfully



for Controller of Legal Services



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SWITCHBOARD 071-276 3000
GTN 276

Philip Kossoff Esq
16 Park Drive
LONDON,
NW11 7SH

My Ref: LRO35/N5090/8/06
Your Ref:

31 August 1993

Dear Mr Kossoff

PLANNING APPLICATION FOR AN ERUV IN BARNET

I am writing to correct the letter of 5 March from Mr Stephen Bourner, which has only just come to my notice.

Mr Bourner was in error in saying that this Department advised the London Borough of Barnet and the United Synagogue Eruv Committee that the application was unacceptable. In fact, this Department has expressed no opinion on the merits of the planning application, and indeed has none. It has been explained to the United Synagogue Eruv Committee that there is no nexus between the Town and Country Planning Act 1990 (under which their planning application falls to be determined) and the Highways Act 1980, meaning that the grant of planning permission would not by itself enable them to proceed. It has also been explained to them that it is not possible to anticipate the outcome of any applications they may make under section 178 of the Act of 1980 for consent to place wires across trunk roads for the purposes of the proposed eruv; under sections 115A-K of the Act of 1980 (as amended by the Local Government (Miscellaneous Provisions) Act 1982) to enable supporting posts to be erected in trunk road footways; or under section 247 of the Act of 1990 for an order stopping up those parts of trunk roads in which supporting posts would be erected.

I am sorry that you were misled before.

EDWARD DEVEREUX
Head of Development Control
London Network Management Division

Philip Kossoff
16 Park Drive
London NW11 7SH
Tel: 081-455 5983
Fax 081 458 6327
Mon, Nov 8, 1993

Dept. of Transport
PO Box 2224
London

Your reference LRO35/N5090/8/06 By Fax.

Dear Mr Devereux,
Planning application for Eruv. in Barnet

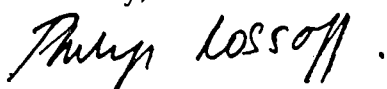
Thank you for your letter of th 31st. August.93 .

I do not follow the necessity for your letter as it was quite clear, within the terms of the correspondence, that Mr. Bourner, was not refering to the unacceptability or merits of the planning application, but solely to the incapacity of the Dept or other highway authoriy to licence the structures as 'apparatus' for the purposes of Section 181 of the Highways Act 1980 [now Sec 50 of New Roads and Street Works Act 1991].

From your letter I assume, that no alternative application for licencing the structures has yet been made to the Dept. under Section 115A/K of the Highways Act 1980. [as amended by the by the Local Government (Miscellaneous Provisions) Act 1982]. I assume also that, as far as you are aware, no application has yet been made under Section 247 of the Planning Act 1990 to close any of the highways at the relevant sites. Kindly, confirm the position as soon as possible.

Please can you also assist me on another matter. I have been searching the local trunk roads for existing examples of structures supporting overhead cables or wires strung across a trunk road. This is not uncommon on non trunk roads [e.g. telegraph poles supporting phone lines], but I have not found any, on the trunk roads that I have inspected so far. I would very much like to inspect such a site as soon as possible, and I should be grateful, if you would direct me to the location of such a structure, either in the Eruv area, or in any neighbouring area or otherwise. I wish to do this as soon as possible. I should therefore be grateful for your immediate help.

Yours sincerely,



PHILIP KOSSOFF



3

Part I

GENERAL INTRODUCTION

This part of the introductory notes attempts to set out in summary 1-001 form the law relating to rights in highways. It deals with the rights of highway authorities, with particular reference to the difficult problem of "ownership" of highways, the rights of the public, of statutory undertakers, and of adjoining landowners.

These matters are dealt with in detail under the relevant statutory provisions and in the Introductory Notes to each Part of the Act of 1980. The present survey is intended to give an over-all picture of the branch of law with which this work is concerned.

I. THE INTEREST OF THE HIGHWAY AUTHORITY

By section 263 (1) of the Highways Act 1980, "every highway 1-002 maintainable at the public expense, together with the materials and scrapings thereof, vests in the authority who are for the time being the highway authority for the highway." This "vesting" does not confer on the highway authority a mere "special kind of proprietorship" as was argued in *Tithe Redemption Commission v. Runcorn Urban District Council* [1954] 2 W.L.R. 518: it confers on the authority an estate known to the law: a fee simple determinable. As the estate is brought into being by a statute "similar" to the School Sites Acts, this particular kind of fee simple determinable is a fee simple absolute for the purposes of the Law of Property Act 1925 (s. 7 (1)), and, as it is in possession, the highway authority are the holders of a legal estate in the land: the *Runcorn* case (*supra*). This does not, however, precisely define the nature of their rights in the land, for, estate owners though they are, they are certainly a peculiar kind of estate owner. It will be noticed that it is only "highways maintainable at the public expense" which vest in the highway authority, and it is only that class of highway (numerically by far the most important) with which we are here concerned. The surface, as well as the subsoil, of other highways remains with the adjoining owners on either side *ad medium flum*, and this is also true of highways that have been declared to be "prospectively maintainable" under the Public Utilities Street Works Act 1950, the management of which has passed to the local highway authority by virtue of the provisions of that Act.

In the first place, the *corpus* to which the rights of the authority attach—the extent of the land itself—is by no means defined with that degree of exactitude expected in conveyancing practice. In the second place, even the rights that the authority enjoy over that *corpus* by virtue of their estate ownership are not clear. In this century, real property lawyers have become accustomed to seeing the importance of the concept of estate ownership in fee simple—the largest estate in land known to the common law—dwindle under the influence of statute; the estate ownership of the Settled Land Act or the Land Registration Act is confined

1-002

1-002 within the powers given by the particular statute, and social legislation of various kinds, including the Town and Country Planning Acts, the Agriculture Acts and the various Rent Acts, has greatly diminished the rights of the fee simple owner to do as he wishes with his own. In the special case of a highway, however, estate ownership seems to have lost its ordinary meaning altogether except in so far as it confers a liability to pay tithe redemption annuity (the *Runcorn* case, *supra*).

(i) The corpus

1-003 In the *Runcorn* case it was said (*per* Denning L.J. (as he then was), at p. 530) that the Act vested in the local authority "the top spit, or perhaps, I should say, the two top spits, of the road"; earlier cases had shown that a sufficient vertical section of the road was vested in the authority, both above and below the surface, as would be necessary for the discharge of their duties *qua* highway authority (see, *e.g.* *Rolls v. Vestry of St. George the Martyr, Southwark* (1880) 14 Ch.D. 785), but not in any other capacity or for any other purpose; not, for example, for the construction of a public lavatory beneath the surface of the street, for which operation they must depend on some other power: *Mayor, etc., of Tunbridge Wells v. Baird* [1896] A.C. 434. Trees planted in a highway after dedication are, it would seem, the property of the highway authority (*Stillwell v. New Windsor Corporation* [1932] 2 Ch. 155), and so are items of street furniture such as street lamps or direction signs erected by the highway authority themselves. So far as other items placed in a highway under statutory authority by some body other than the highway authority are concerned, it seems that these remain the property of the body concerned and they do not become the property of the highway authority, as the principle *quicquid plantatur solo, solo cedit* is overridden by the statute. This certainly applies to junction boxes installed by an electricity board: see *Electric Lighting (Clauses) Act 1899*, Sched., para. 13, incorporated by the *Electricity Act 1947*.

Horizontally, the limits of a highway are in some cases well defined; it will include any footpaths or cycle tracks as well as the carriage way, and also any verge *de facto* enjoyed by the public as part of the highway. Where the highway in question is a public path and recorded in the course of a survey made under Part IV of the *National Parks and Access to the Countryside Act 1949*, the written statement should record the width of the path, and this will be conclusive (*National Parks and Access to the Countryside Act 1949*, s. 32 (4) (c)). In other cases, the general principle, to be applied until the contrary may be shown, is that the highway extends between the outer edge of hedges or fences. In general terms, therefore, it seems that what vests in the highway authority in fee simple is the surface of the highway between its more or less defined limits, and sufficient of the top crust and of the air above the highway to enable the highway authority to carry out their functions as such. In the case of an ordinary fee simple owner, the rights of ownership are enjoyed in the soil *ad inferos*, and in the air above *ad coelum*: see, *e.g.* *Truckell v. Stock* [1957] 1 W.L.R. 161. However, a highway authority own only sufficient of the air space above the highway to enable them to carry out their highway functions and they have no control over the air above such "area of user": *New Towns*

THE INTEREST OF THE HIGHWAY AUTHORITY

Commission v. Hemel Hempstead Corporation [1962] 3 All E.R. 183;
Wandsworth Board of Works v. United Telephone Co. (1884) 13 Q.B.D. 904.

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(ii) The highway authority's rights

A fee simple owner can normally do as he likes with his own, subject to the common law principle *sic utere tuo ut alienum non laedas*: not so, however, a highway authority. Not only are they a creature of statute, and so in general terms subject to their acts being declared *ultra vires* if they exceed their statutory powers, but also their very estate in the land is a special statutory creation in spite of its being called a fee simple. If the land ceases to be used for highway purposes the authority's estate ceases, for they have only a determinable fee: *Runcorn* case, *supra*; in some cases the authority may have acquired the subsoil as well as just the highway, as in the case where they have purchased land as the site for an intended highway under Part XII of the Act of 1980; in that event they will be fee simple owners in a true and unqualified sense. They cannot in any event interfere with the rights of the public to use the highway, or otherwise cause an obstruction except in so far as they are expressly authorised so to do by statute. For example they may place bins in the highway for the reception of refuse (Highways Act 1980, s.185), or kitchen waste (Agriculture (Miscellaneous Provisions) Act 1954, s.9); they may erect boundary posts (1980 Act, s.81) and they may construct refuges (s.68) and pedestrian crossings (Road Traffic Regulation Act 1967, ss.21 and 22). They are not, however, occupiers of the highway: "It would be absurd to contend that wherever the legal state is, there is occupation. A road is vested in someone, but in a public road there is no occupation of it any more than of a milestone or a direction post . . . I think there is no occupation at all . . ." (*per* Lord Halsbury L.C. in *Lambeth Overseers v. L.C.C.* [1897] A.C. 625); there is therefore no question of liability for payment of rates in respect of a highway. Similarly a highway, since it is *extra commercium* (this expression is customarily used as indicating land not having an owner—in this context however, it can equally well be understood as land not capable of being let), which fronts adjoins or abuts on a private street (such as in the case of a cross-street), cannot be charged with street-works expenses under the Private Street Works Code. "Owner" is defined in section 329(1) as being the person entitled to receive the rack-rent of the premises—clearly it would not be possible to let a highway at a rack-rent, or, indeed, at any rent.

It appears from recent decisions, however, that the highway authority may have some rights and responsibilities similar in nature to those of ordinary owners of land. In *Wiltshire C.C. v. Frazer* (1984) 47 P. & C.R. 69 the Court of Appeal held that the summary procedure in R.S.C. Order 113, by which a person claiming possession of land may obtain possession from persons who have entered into or remained in occupation of that land without licence or consent, was appropriate for a highway authority seeking to evict caravan dwellers who had pitched camp within the highway. The Court of Appeal held that the determinable fee simple interest of the highway authority in the surface of the highway gave a *prima facie* right to possession. It mattered not that the caravan dwellers did not obstruct the whole of the highway. The requirement in the Order that the defendants should be "solely" in occupation simply meant that all those present on the highway should have been there without consent or licence. Griffiths, L.J., at p. 75-6, went further.

"It is conceded that if some persons went into occupation . . . so completely that it was utterly blocked and that no person would pass and re-pass along it, in those circumstances an action for possession would lie

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1-004 against these persons at the suit of the highway authority. It must follow from that, as Ord. 113 is purely procedural, and is intended to be an expeditious and economical way of recovering possession, where the plaintiff would be entitled to proceed by a writ for possession, that Ord. 13 procedure would lie in such circumstance."

It is submitted that this decision as a whole, and, in particular, the judgment of Griffiths L.J. breaks new ground. The interest of the highway authority in the top two spits of the highway is as sufficient an interest as is necessary to protect and assert the public right to pass and re-pass: see *Rolls v. Vestry of St. George the Martyr, Southwark (supra)*. Where the highway is obstructed, the highway authority asserts the public right by an action in public nuisance or by invoking one of the statutory remedies *e.g.* s.143. It appears at first sight to be incongruous for a highway authority to be asserting a right to possession. It is well established that the sub-soil owner may bring an action for trespass against a member of the public who is on the highway otherwise than in exercise of the right of passage: see *Harrison v. Duke of Rutland* [1893] 1 Q.B. 142 and the cases cited at para. 1-005 below. In *Hare v. Overseers of Putney* (1881) 7 Q.B.D. 223, Bramwell, L.J., said about the owners of a public bridge, at p. 231:

"No doubt the property is in them, and the property draws to it the possession." However, it is believed that no reported decision prior to *Wiltshire C.C. v. Frazer (supra)* has turned on the right of the highway authority *qua* landowner to possession.

It is submitted that it is unlikely that highway authorities would seek to gain possession of a highway *other* than by Order 113. As no highway authority may consent to or license an obstruction without express statutory authority the pre-condition for the summary procedure will exist in every case.

See also *R. v. Avon C.C., ex p. Rexworthy* [1989] C.O.D. 347 for a decision on the relationship of the respective duties of a county council under the Caravan Sites Act 1968 and the Highways Act 1980 when a gypsy encampment obstructed the highway.

Together with rights akin to those of an occupier of land there may also be responsibilities. In *Russell v. Barnet L.B.C.*, *The Times*, April 19, 1984, it was held by Tudor Evans, J., that a highway authority had sufficient control over a tree (which remained in the ownership of the subsoil owner) by virtue of its powers to maintain the tree (under s.82(5) of the Highways Act 1959, as amended) to be liable for a nuisance caused to an adjoining landowner by the action of tree roots.

II. THE RIGHTS OF THE PUBLIC

1-005 Members of the public as such have a right to pass and repass along the Queen's highway; this is an ancient common law right, the existence of which is an essential characteristic of a highway. Whether or not the public are entitled merely to walk, to ride on horseback, to drive cattle or other animals or to use wheeled vehicles on any particular highway will depend on the status of the highway. At common law, the greater rights of the public have always included the lesser, in that an established right of way for vehicles implied of necessity a corresponding right of way for cattle and pedestrians. But at least so far as "special roads" are concerned the Secretary of State for the Environment may now exclude specified classes of "traffic" from particular roads, and pedestrians and "animals, ridden, led or driven," are particular classes of "traffic" which may so be excluded: see Act of 1980, Sched. 4, Classes VIII and IX, and *ibid.*, section 17. Particular activities on the highway, which might amount to "passing and repassing" also may be prohibited in individual cases by similar administrative action, *e.g.* motor-racing (Road Traffic Act 1972, s.14) or motor-cycle trials (*ibid.*, s.15) and the taking of a dog on a highway otherwise than on a lead (*ibid.*, s.31).

THE RIGHTS OF THE PUBLIC

It is clear that the rights of the public in the highway at common law are only for passage; a user of the highway may be restrained if he strides to and fro annoying a neighbouring landowner and disturbing his grouse shooting (*Harrison v. Duke of Rutland* [1983] 1 Q.B. 142), or spying on the form of horses training for a race (*Hickman v. Maisey* [1900] 1 Q.B. 752). There is no right to picket on the highway otherwise than in contemplation or in furtherance of a trade dispute (*Hubbard v. Pitt* [1975] 2 W.L.R. 254). A passer-by can apparently claim no right to sit down in the centre of the carriage-way (*The Calgarth* (1927) P.93, at p. 107), although presumably he may take a rest by a mile-stone in the fashion of Dick Whittington (*Hickman v. Maisey* at p. 755). On the other hand he has no right to sit on a wall at the side of and being part of the highway and talk about bees (*Liddle v. North Riding of Yorkshire C.C.* [1934] 2 K.B. 101), although "a person leaning up against a fence by the side of the road is not necessarily a trespasser" (*per* A. L. Smith L.J. in *Harrold v. Watney* [1898] 2 Q.B. 320, at p. 322). These cases have always been explained by the passer-by being referred to in such circumstances as a trespasser against the owner of the subsoil beneath the highway, normally, the adjoining landowner, as in the *Duke of Rutland's* case (*supra*), though not invariably; see *e.g. Mappin Bros. v. Liberty & Co., Ltd.* [1903] 1 Ch. 118. It is not at all clear that this explanation is still sound since the decision in the *Runcorn* case, for if the fee simple in the surface is vested in the highway authority, how can there be said to be a trespass in respect of which the owner of the subsoil could bring proceedings? There is no physical trespass to the subsoil itself and the owner of the subsoil certainly cannot be said to be in possession of a "surface crust" which is vested in the highway authority in fee simple; as a general principle, the plaintiff in trespass must be able to show that he is in possession of the *locus in quo*, as trespass is essentially an injury to possession (see, *e.g. Jones v. Llanwrst U.D.C.* [1911] 1 Ch. 393). On the other hand, in *Randall v. Tarrant* ([1955] 1 All E.R. 600) it seems to have been contemplated that (although on the facts the Court of Appeal did not so hold in the particular case) a driver of a vehicle is capable of trespassing on a highway if he should leave his vehicle on the highway for an unreasonable time. The word "trespasser" was used in this context, but rather in the sense of exceeding the legitimate use of the highway, and it is certainly not clear as to whether the trespass was supposed to have been committed to the injury of the highway authority or of the landowner.

Any lawful user of a highway which is maintainable at the public expense is now entitled to assume that the highway authority will carry

[THE NEXT PAGE IS 1009.]

THE RIGHTS OF THE PUBLIC

out their statutory duty (Act of 1980, s.41) to maintain that highway to such an extent that he does not suffer injury as a result of its bad condition. However, if he does suffer such an injury, the authority will have a defence 1-006 in any action for damages brought against them if they can establish that they had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous to traffic (*ibid.*, s.58). When the court consider whether that duty has been observed in a particular instance, they must have regard to certain matters listed in the section.

In the case of a highway which is not maintainable at the public expense any user thereof takes the surface as he finds it; the frontagers, or street managers, in whom the surface is vested, are under no corresponding duty to keep the surface in repair, and they will not be liable if any injury is caused as a consequence of its lack of repair.

It seems then that the common law recognises certain somewhat ill-defined rights of members of the public in a highway maintainable at the public expense, but if those rights are exceeded, any person aggrieved may be able to take proceedings for a declaration to the effect that the defendant is exceeding his rights, or possibly for damages in proceedings akin to trespass. It is submitted that these proceedings could be commenced by any other lawful user of the highway. Normally, however, a case of trespass, as distinct from obstruction, would have to be brought at the instance of the occupier of the land. Unlawful user of the highway by a member of the public may also, in certain circumstances, give rise to proceedings in public nuisance on the grounds of obstruction at the instance of another member of the public who has suffered an injury as a consequence thereof.

III. THE RIGHTS OF STATUTORY UNDERTAKERS

By "statutory undertakers" we are here thinking of public undertakings 1-007 authorised by statute to supply some service to the public, such as the gas and electricity boards and water authorities. All these authorities have powers under their respective constituent statutes to break open the surface of a public highway and to place in it their wires, pipes, mains, switch gear, junction boxes and other impedimenta; as we have seen, such items remain the property of the statutory undertakers concerned. The procedure that must be followed by the undertakers concerned when exercising these rights is prescribed by the Public Utilities Street Works Act 1950, and it should be remembered that those rights may be exercised in relation not only to the highway itself but also to "controlled land" adjoining the highway. The apparatus of the Post Office is safeguarded by the provisions of section 334 of the Act of 1980. In this context at least, the extent of the rights exercisable in respect of the highway is reasonably clear, being confined to the several statutory provisions.

IV. THE RIGHTS AND DUTIES OF ADJOINING LANDOWNERS

In the first place, an adjoining landowner has a common law right 1-008 to make a means of access from any point on his land on to the adjoining highway (*Marshall v. Blackpool Corporation* [1935] A.C. 16) and

1-008

PART I—GENERAL INTRODUCTION

1-008 he has a private right attached to his property to gain access to the highway, one "which must be reasonably exercised so as not to interfere with the reasonable exercise by the public of their rights of way": *per* Cozens-Hardy M.R. in *Tottenham U.D.C. v. Rowley* [1912] 2 Ch. at p. 644. The question sometimes arises as to whether a highway authority may require payment for allowing access to the highway proper across other land in the authority's ownership—which may itself have been acquired for highway purposes. In *R. v. Northamptonshire County Council, ex p. Commission for New Towns* [1992] C.O.D. 123 it was held that where land was sold to a highway authority for highway purposes, but which was not in fact used for that purpose, the authority could lawfully, as a matter of private law, make a charge for access across that land to the highway. However, in this case, as a matter of public law, the respondent had created a legitimate expectation that there would be access to the highway without charge and that it would be unfair to allow the respondent to defeat that legitimate expectation. The court did not feel that the doctrine of estoppel would itself have decided the case in favour of the Applicant.

It is submitted that it must be wrong in principle for a highway authority to seek to charge for the right to cross land which was acquired either by agreement or by compulsory acquisition for the purpose of constructing a highway, where the vendor had properly assumed that his remaining land would have access to the new or improved highway, and where the purchase price or compensation paid may have reflected that assumption. The decision in *R. v. Northamptonshire County Council, ex p. Commission for New Towns* appears, however, to suggest that in other circumstances a highway authority may well be able to have ransome strips along the edge of the highway proper.

The rights of adjoining landowners to gain access to the highway from all parts of their land have in any event been very greatly reduced by statute, for the making of any access to a highway amounts to development for which express planning permission is normally necessary under the Town and Country Planning Act 1990 (the making of a new access to a non-classified road where the gates, etc., do not exceed 1 metre in height will probably be exempt from the need to obtain express permission: General Development Order 1988, Second Schedule, Part 2, Class B). Access to a road may be totally excluded by an order made under the Act of 1980. The method of construction of the means of access may itself be subjected to the control of the highway authority by action taken under section 184 of the Act of 1980. Secondly, the adjoining landowner is also presumed to be the owner *ad medium filum* of the subsoil beneath the "two spits" vested in the highway authority, and also of a column of air above the highway beyond what is needed by the highway authority. The presumption of ownership *ad medium filum* is both rebuttable and supportable (*St. Edmundsbury Board of Finance v. Clark* [1973] 1 W.L.R. 1572. Coal and mines of coal in such subsoil are, of course, vested in the National Coal Board (Coal Act 1938, s.3; Coal Industry Nationalisation Act 1946, ss.5 and 38), and natural petroleum vests in the Crown under the Petroleum (Production) Act 1934, but otherwise the owner may take minerals, etc., from the subsoil of a highway, provided he does not let down the surface, see, *e.g.* *Benfieldside Local Board v. Consett Iron Co.* (1877) 3 Ex.D. 54, or disturb any of the services in the highway belonging to one or other of the statutory undertakers above referred to. A landowner also has power to break open the surface of a street for the purpose of connecting his premises to the public sewers situate within the highway (Public Health Act 1936, s.34). However, as owner of the subsoil *ad medium filum*, he may be entitled to prevent another landowner from running his services through that subsoil in front of his (the first-named owner's) property; this problem does not seem to arise often but it could become the subject of a neighbours' dispute.

An adjoining landowner has a number of duties imposed on him by statute by virtue of the proximity of his land to the highway. Thus, he may not allow water to be discharged from gutters or downpipes on his property on to passengers on the highway (Act of 1980, s.163); he may not maintain barbed wire on a fence on his land which is a nuisance to the highway (*ibid.*, s.164), and any unfenced or inadequately fenced source of danger to persons using a street on land adjoining the street, must be protected or enclosed, etc., on notice served by the local authority (*ibid.*, s.165). It will be noted that this provision applies only to "streets" as distinct from highways; the two words are not synonymous. Other statutory provisions are designed to control dangerous buildings (Building Act 1984, ss.77 and 78). In addition, the common law regards the highway authority and the adjoining landowner in the same manner as any other two owners of adjacent properties. Thus, it seems that the landowner would be held responsible for any damage caused to the highway by trees planted on the owner's land, either from overhanging branches or underground roots (*Butler v. Standard Telephones and Cables* [1940] 1 K.B. 399). However, it is not absolutely clear to what extent the highway authority is similarly liable to the adjoining landowner. The landowner may also be liable in damages to a user of the highway if he should be injured as a consequence of a nuisance arising on his land (e.g. in the case of a branch falling off a tree (*Caminer v. Northern and London Investment Trust, Ltd.* [1951] A.C. 88), or by escaping surface water (*Att.-Gen. v. Waring* (1899) 63 J.P. 789). Similarly, the landowner is under a duty to maintain his premises in a reasonably safe condition so that injury will not be caused to persons lawfully in the highway. Incidentally, this is where the special position of a trespasser on the highway may be of importance, as a defendant, when sued for damages caused to such a plaintiff, may be able to establish the fact that the plaintiff has exceeded his rights as a defence in such proceedings, as in *Randall v. Tarrant*, *supra*.

V. CONCLUSION

It seems that although highways have as long a history as the common law, several of the general principles of law concerning them have still not been fully worked out. The fee simple vested in a highway authority relates to a but ill-determined *corpus*, and the rights it confers, considerably less than a true juristic "ownership," are also ill-defined. The rights of the adjoining owner in the subsoil are so insubstantial as to be virtually worthless in most circumstances, whilst his duties, sounding in tort, may well be onerous. The rights of the public to use the highway are vague and ill-defined, and it is by no means clear how or in what circumstances a member of the public can be said to be a "trespasser" on a public highway. Concepts and general principles of this kind are notoriously bad subjects for legislation; we will probably have to look to the courts for further clarification.

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ERUV (pl. Eruvin; Heb. עֶרֶב), term applied to various symbolical acts which facilitate the accomplishment of otherwise forbidden acts on the Sabbath and festivals. The literal meaning of *eruv* is "mixing" and it probably connotes the insertion of the forbidden into the sphere of the permissible (cf. Maim. Yad, Hilkhot Eruvin, 1:6). Thus, though it is forbidden (biblically, according to some authorities, rabbinically, according to others) to walk further than 2,000 cubits from one's town on the Sabbath or festivals, one may "mix" the forbidden and permitted areas by establishing an *eruv tehumim* (boundary *eruv*). This is accomplished by placing sufficient food for two meals (also called *eruv tehumim*) less than 2,000 cubits from the town, thus establishing another "residence" from which one can again walk the permissible distance in any direction. This ordinance is evidently ancient since its existence is assumed in tannaitic sources (cf. Er. 3-5; Tosef. Er. 3-7; et al.). It is discussed extensively in the Talmud (cf. Er. 26b-61b; TJ, Er. 3-5) and by later authorities (e.g., Tur., Sh. Ar., OH 408-16).

A similarly old statute (attributed to Solomon in Er. 21b) is that of *eruv hazerot* (domain *eruv*). While carrying between private and public domains is forbidden on the Sabbath, the rabbis also forbade carrying between two private domains. For example, if several houses opened onto one courtyard, an object could not be removed from one house to another, nor from a house to the courtyard (the latter is considered private property, owned by all the residents, if it is surrounded by a wall at least ten handbreadths high). To facilitate such carrying, a loaf of bread (called *eruv hazerot*) owned by all the residents is placed in one of the houses, thereby symbolically creating mutual ownership of all the dwellings. The houses and courtyard are thereby "mixed" together into one private domain. The sources indicate that *eruv hazerot* was already practiced in the time of the Second Temple; the details are elaborated in rabbinic literature from tannaitic times (Er. 1:10; 2:6; et al.; see also Er. 17b, 61b-82a, et al.) down to the later codes (cf. Tur., Sh. Ar., OH 366-95).

To "mix" private and public domains in order that an individual may carry from one to the other or within the latter, an *eruv* is erected around a given settled district. According to most early authorities, this *eruv* consists of a minimum of four poles at least ten handbreadths high, connected by other poles from top to top, forming the shape of a gate. The accepted practice among Jewish communities for generations has been to erect such an *eruv* by connecting poles (of the required height) with iron wires. A minority opinion among the authorities, based on a disagreement of interpretation of a talmudic section (Er. 11a-b; cf. Tur., Sh. Ar. OH, 362), holds that the poles must also be no more than ten cubits apart.

No *eruv*, however, can permit carrying within what rabbinic law considers as falling under the biblical definition of public domain (cf. Shab. 6b, Er. 6). According to most authorities, such a domain is defined as an area crossed by at least 600,000 people (the number of Jews who fled Egypt) every day, and this definition is accepted in law. Since such public domains exist only in the largest cities, an *eruv* is effective in most areas. Some consider the minority opinion, which finds a biblically defined public domain in most settlements. While individuals refrain from carrying in such areas, the authorities admit that this practice is not required of everyone by law (cf. Shab. 6b; Tos. to Shab. s.v. Kan; Tur., Sh. Ar., OH 363, 345).

According to rabbinical decree, in order to cook for the Sabbath during a festival immediately preceding it, one must establish an *eruv tavshilin* (cooking *eruv*). Before the festival, bread and a cooked food (some feel the former is

unnecessary) are put aside for the Sabbath. Since the preparation of food for the Sabbath begins before the festival, it may be continued during the holidays. The preparation of food for the festival and that for the Sabbath are thus "mixed." The food prepared before the holiday is "mixed" with that prepared within the day, and the use of both is permitted. The term *eruv tavshilin* is applied both to the act of setting aside the food and to the food itself. This practice also evidently dates from an early period, since a controversy is recorded between the schools of Shammai and Hillel regarding one detail: Bet Shammai held that not one but two cooked dishes must be set aside. *Eruv tavshilin* is made by every householder, although, in principle, one man's *eruv* (e.g., that of the rabbi) can dispense the whole congregation or city. The making of the *eruv* is preceded by the standard benediction "Blessed art Thou . . . Who hast sanctified us with Thy commandments and hast commanded us concerning the ordinance of the *eruv*" followed by an Aramaic sentence to the effect that "by virtue of this *eruv* it is permitted to bake, to cook, and to kindle light as well as to provide for our necessary wants on this festival day for the succeeding Sabbath; for us and for all the Israelites living in this town." In some congregations it is customary to announce before the evening service of the festival that those who have forgotten to make *eruv tavshilin* are dispensed by the rabbi's *eruv*. In the Portuguese rite of Amsterdam the congregation was reminded by the *hazzan* on the day preceding the eve of the festival of the obligation to make *eruv* (*Vosses tens obrigação de fazer Hirub*). The rules regarding *eruv tavshilin* are discussed in the Talmud (cf. Mishnah Bezaḥ 2:1; TB, Bezaḥ 16a-17b; TJ, Bezaḥ 2:1) and the codes (Sh. Ar., OH 527).

Bibliography: S. Ganzfried, *Code of Jewish Law*, tr. by H. E. Goldin, 2 (1928), 135-45; 3 (1928), 14-16; H. Tchernowitz, *Tikkun Shabbat* (1900); N. Z. Nobel, *Porat Yosef* (1914); Eisenstein, *Dinim*, 326-8. [Z.K.]

P U B L I C N O T I C E

WE HEREBY DECLARE THAT THE "ERUV" WHICH SOME PEOPLE WISH TO ESTABLISH IN THE N.W. LONDON AREA, IS AGAINST THE JEWISH LAW, AND WILL NOT BE ACCEPTED IN OUR COMMUNITIES. RABBI H. PADWA, THE FOREMOST HALACHIC AUTHORITY IN GREAT BRITAIN HAS ISSUED A PUBLIC NOTICE IN WHICH HE DESCRIBES THE MOVE TO SET UP AN "ERUV" IN OUR AREA, "A VIOLATION OF THE SANCTITY OF THE SABBATH".

WE CALL UPON THOSE CAMPAIGNING FOR AN "ERUV" TO DESIST FORTHWITH.

RABBI S. RUBIN

RABBI E. HALPERN

RABBI D. COOPER

RABBI P. ROBERTS

RABBI C. FELDMAN

RABBI G. HAGER

RABBI D. HALPERN

Goldman Green

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5. Representations received from consultees, owners of the land, and the public

Every duty to "consult" imposed on the local planning authority implies an obligation to take into account the representations the authority receives from the consultee: *R. v. Secretary of State for Social Services, ex p. Association of Metropolitan Authorities* [1986] 1 All E.R. 164, noted in the Commentary to s.62. But the legislation also imposes four specific duties to take representations into account: P70.07

- (1) *owners and agricultural tenants of the land*: subs. (3) provides that an authority's functions under this section are subject to ss.66 (ownership certificates) and 67 (ownership certificates in mineral applications), and that effect is further reinforced by s.71, which requires them to take into account any representations received by them within 21 days from the latest date of service or publication of the relevant notice;
- (2) *"bad neighbour" development*: in determining any application of a class designated under s.65, the authority must take into account any representations relating to that application received by them within 21 days from the date of the application (s.71(1)).
- (3) *development affecting conservation areas and the setting of listed buildings*: in determining any application for planning permission for development which would affect the setting of a listed building, or the character or appearance of a conservation area, the authority are required to have regard to any representations relating to the application received by them within 21 days from when notice of the application was first displayed (Planning (Listed Buildings and Conservation Areas) Act 1990, ss.67(7), 73(1));
- (4) *applications for use of land as caravan site*: under s.71(3) the authority are required to consult the site licensing authority, if it is a different authority, before granting permission for use of land as a caravan site.

The specific duties outlined above do not absolve an authority from any obligation to have regard to other representations received by them, or entitle them simply to ignore relevant representations that are received after the expiry of the prescribed period. An obligation to take representations into account may arise separately by reason, for example, of the procedural requirements of fairness, and under the overall duty under subs. (1) to have regard to all material considerations (see further below).

6. Other material considerations: general approach to construction

P70.08

The requirement to have regard to "any other material considerations" is, in effect, a statutory adaptation of the formula devised by the courts in reviewing the validity of administrative action, that all relevant matters should have been taken into account. The courts have therefore assumed the converse test to be equally applicable, and have accepted that a determination under this section may be invalid if based upon an irrelevant consideration.

There are two limbs to materiality. The authority are required to have regard to all considerations which are material to the application; and to be material they must be planning considerations. But the Act offers no further guidance as to what considerations might be regarded as material in the latter sense, and it has therefore fallen to the courts to set the limits of discretion in development control. The starting point is the broad interpretation adopted by Cooke J. in *Stringer v. Minister of Housing and Local Government* [1971] 1 All E.R. 65, at 77:

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"In principle, it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances."

That formula is cast in broad terms, and the courts have generally sought to avoid prescribing *a priori* limitations to the statutory discretion, recognising that too narrow a construction would bring the courts too far into matters of planning policy rather than law, and run the risk of substituting bare legalism for the broad flexibility that Parliament must have intended by adopting so loose a formula. But some general principles have emerged, and these are analysed below. The breadth of the statutory formula was re-emphasised by the House of Lords in *Great Portland Estates plc v. Westminster City Council* [1985] A.C. 661; [1985] J.P.L. 108, which accepted that while the general principle should be that planning should be concerned only with the development and use of land, this approach should be tempered where appropriate by having regard to the circumstances of individuals. Lord Scarman (in whose opinion the other members of the House concurred) insisted that there must be exceptions:

"Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control."

In that case, their Lordships upheld a provision of Westminster's local plan which sought to protect certain specified industrial activities in central London from disappearance in the face of the competitive pressure to redevelop their sites for other more profitable uses, being uses which did not assist the viability of other important central London activities. Although the effect of the policy would be effectively to confer security of tenure on existing tenants, there was a genuine planning purpose for doing so: indeed, in Lord Scarman's opinion it was "a powerful piece of positive thinking within a planning context", and although it meant that certain occupiers would be protected, that was a consequence rather than the purpose of the policy.

7. Material considerations: specific instances

P70.09 The general principles as to material considerations that have emerged from the case law may be summarised as follows:

- (1) *the protection of purely private interests*: the planning authority may refuse planning permission in order to protect a purely private interest, provided there is a planning purpose or other special consideration involved (*Great Portland Estates plc v. Westminster City Council* [1985] A.C. 661) and the Act does not require the drawing of any distinction between private and public interests: see *e.g.*, *Stringer v. Minister of Housing and Local Government* [1971] 1 All E.R. 65

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(policy of planning authority to restrain development within several square miles around Jodrell Bank radio telescope); *R. M. C. Management Services Ltd. v. Secretary of State for the Environment* (1972) 222 E.G. 1593 (refusal of permission for ready-mixed concrete plant on site adjacent to high precision engineering plants requiring especially clean air); *Barratt Developments (Eastern) Ltd. v. Secretary of State for the Environment* [1982] J.P.L. 648 (permission refused for retention of dwelling house whose wrong siting was detrimental to another house in a nearby road); *Newham London Borough Council v. Secretary of State for the Environment* [1986] J.P.L. 607 (sound insulation requirements of proposed developments, involving conversion of single dwelling houses into flats). But see also *Brewer v. Secretary of State for the Environment* [1988] J.P.L. 480, where the court (Mr. David Widdicombe Q.C., sitting as Deputy Judge) took the view that in general planning was concerned with land use from the point of view of the public interest, and as a generality was not concerned with private rights. Thus, the court held, the existence or absence of private rights of light was an irrelevant consideration in determining a planning application. But it is not always possible to draw the line so sharply. It may be necessary for an applicant to overcome some problem of private rights if the development is to proceed, such as the acquisition of alternative access to the site; and the authority will only be able to impose a *Grampian* condition (see further below) to secure that development should not commence in advance of the rights being acquired if satisfied that there is a reasonable probability that they can be acquired, or other objections overcome, within the normal development commencement period. The authority will also need to bear in mind that the grant of planning permission may result in a change in the character of a neighbourhood, and that if local residents or the local authority thereafter sue for nuisance, they will be faced with a *fait accompli* by virtue of the planning permission: their action will fall to be determined by reference to a neighbourhood with that development in it, and not as it was previously (*Gillingham Borough Council v. Medway (Chatham) Dock Co. Ltd.* [1992] 1 P.L.R. 113).

- (2) *matters regulated by other statutory codes*: provided a consideration is material in planning terms, the authority are entitled to have regard to it under this section notwithstanding that other machinery may exist for its regulation: see e.g., *Esdell Caravan Parks Ltd. v. Hemel Hempstead Rural District Council* [1966] 1 Q.B. 895 (overlap between planning and caravan sites licensing controls under the Caravan Sites and Control of Development Act 1960); *Maurice v. London County Council* [1964] 2 Q.B. 362 (overlap between building control and planning control); *Hoveringham Gravels Ltd. v. Secretary of State for the Environment* [1975] Q.B. 754 (protection of ancient monument); *Ladbroke (Rentals) Ltd. v. Secretary of State for the Environment* [1981] J.P.L. 427 (overlap between planning control and gaming licensing). The materiality of such a consideration is not affected by the fact that under the alternative code the applicant may be able to seek compensation for the restriction: see e.g., *Westminster Bank Ltd. v. Minister of Housing and Local Government* [1971] A.C. 508 (planning permission refused on ground that the land might be required in the future of road widening scheme, notwithstanding that an alternative procedure was prescribed by the Highways Act, the imposition of an improvement line, for which compensation would have been payable); and cf. the following cases relating to the imposition of planning conditions restricting existing use rights: *Kingston-upon-Thames Royal London Borough Council v. Secretary of State*

P70.10 *for the Environment* [1974] 1 All E.R. 193; *Peak Park Joint Planning Board v. Secretary of State for the Environment* [1980] J.P.L. 114; *British Airports Authority v. Secretary of State for Scotland* [1980] J.P.L. 262. Similarly, the fact that an authority might have to pay compensation under this Act for the use of its discontinuance power under s.102 to secure the relocation of an industrial use does not disable it from granting planning permission under this section for residential development on adjoining land knowing that this will increase pressure on industrial uses to relocate from the area (*R. v. Exeter City Council, ex p. Thomas (J.L.) & Co. Ltd.* [1989] 3 P.L.R. 61).

P70.11 (3) *the retention of an existing use*: the value in planning terms of the existing use (or existing use rights) of land is clearly a material consideration in determining a planning application involving any change in the use, unless there is no possibility that the refusal of planning permission will result in its retention: see e.g., *Clyde and Co. v. Secretary of State for the Environment* [1977] 1 W.L.R. 926 (existing permission for residential use, permission validly refused for change of use to offices, even although the premises have never actually been put to residential use); *Granada Theatres Ltd. v. Secretary of State for the Environment* [1981] J.P.L. 278 (permission refused for change of use from cinema to bingo hall). The test suggested by Sir David Cairns in the Clyde case was to ask whether there was a "fair chance" if office use were refused that the building would be used for housing rather than being allowed to stand empty. That test was adopted as "as good a test of likelihood as any" by Hodgson J. in *Finn (L.O.) & Co. v. Secretary of State for the Environment* [1984] J.P.L. 734 at 736. But in *Westminster City Council v. British Waterways Board* [1985] A.C. 676; [1985] J.P.L. 102 Lord Bridge (in whose speech the other members of the House of Lords concurred) expressed the view that the phrase

"suggests, in my respectful opinion, an unduly and, on the facts, unnecessarily lax criterion. In a contest between the planning merits of two competing uses, to justify refusal of permission for use B on the sole ground that use A ought to be preserved, it must, in my view, be necessary at least to show a balance of probability that, if permission is refused for use B, the land in dispute will be effectively put to use A."

Although the "fair chance" test was revived by the Court in *Vikoma International Ltd. v. Secretary of State for the Environment* [1987] J.P.L. 38 (Mr. David Widdicombe Q.C. sitting as Deputy Judge) it appears that Lord Bridge's words may not have been cited to the court. In *London Residuary Body v. Lambeth London Borough Council* [1990] 2 All E.R. 309 the House of Lords emphasised that although the desirability of retaining an existing use was clearly a material consideration, provided there was a reasonable probability that the use would be preserved if permission for the new use were refused, there was no "competing needs" test requiring that the presumption in favour of development should only take effect if there was an even competition between the desirability of old and new uses. The Court of Appeal had held ([1990] J.P.L. 200, 211) that the presumption in favour of development had to be treated as rebutted in a case where a need for the existing use was established, no need or desirability for the proposed use had been established, and the change of use would cause demonstrable harm to interests of acknowledged importance. The House of Lords rejected that analysis: the

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wished to be "absolutely convinced that the commercial development of the site is the only way of achieving the Royal Opera House improvements". Having then examined other possible ways of financing the scheme, and finding them inadequate, the authority proceeded to grant permission. The permission was challenged on the ground that to permit commercial development of a site for purely financial reasons was to take account of a consideration that was not material, even although the Royal Opera House was willing to enter a binding agreement to use the proceeds from the commercial development for the benefit of the Opera House. The challenge was rejected.

In the Court of Appeal, Keir L.J. observed (at [1989] 1 P.L.R. 50-51) that:

"Financial constraints on the economic viability of a desirable planning development are unavoidable facts of life in an imperfect world. It would be unreal and contrary to common sense to insist that they must be excluded from the range of considerations which may properly be regarded as material in determining planning applications. Where they are shown to exist they may call for compromises or even sacrifices in what would otherwise be regarded as the optimum from the point of view of the public interest. Virtually all planning decisions involve some kind of balancing exercise. A commonplace illustration is having to decide whether or not to accept compromises or sacrifices in granting permission for developments which could, or would in practice, otherwise not be carried out for financial reasons. Another, no doubt rarer, illustration would be a similar balancing exercise concerning composite or related developments, *i.e.* related in the sense that they can and should properly be considered in combination, where the realisation of the main objective may depend on the financial implications or consequences of others. However, provided that the ultimate determination is based on planning grounds and not on some ulterior motive, and that it is not irrational, there would be no basis for holding it to be invalid in law solely on the ground that it has taken account of, and adjusted itself to, the realities of the overall situation."

And he endorsed (at 55) the finding of the High Court (Webster J.) that:

"It seems to me to be quiet beyond doubt [but] that the fact that the finances made available from the commercial development would enable the improvements to be carried out was capable of being a material consideration, that is to say, that it was a consideration which related to the use or development of the land, that it related to a planning purpose and the character of the use of the land, namely the improvements to the Royal Opera House which I have already described, particularly as the proposed commercial development was on the same site as the Royal Opera House and as the commercial development and the proposed improvements to the Royal Opera House all formed part of one proposal."

How far this concept of "enabling development" might extend to proposals which are not only functionally separate but also physically separated is unclear, but a majority in the Court was anxious to confine it to physically related sites. Although Nichols L.J. observed (at 59) that "Circumstances vary so widely that it may be unsatisfactory and unwise to attempt to state a formula which is intended to provide a definitive answer in all types of case"; Staughton L.J. observed (at 60):

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"in the present case, the improvement of the Royal Opera House, B, is a development which the Westminster City Council considers to be desirable, for valid planning reasons. The building of office premises in close proximity, A, is necessary if development B is to occur. It can fairly and reasonably be said to relate to the proposed development which ought to be permitted. The whole is, to quote the words of Kerr L.J., a composite or related development. The offices are not ulterior or extraneous; they are part of the whole." P70.13

A similar flexibility in relation to financial considerations as material considerations under this section is demonstrated in *Essex County Council v. Secretary of State for the Environment* [1989] J.P.L. 187; *Wain Leisure Ltd. v. Secretary of State for the Environment* [1989] J.P.L. 190 and *R. v. Beverley Borough Council, ex p. Wilson* [1989] J.P.L. 183 (decision of Glidewell J. in 1982, but first reported in 1989) and *Care Link and Trustees of the Formby Settlement v. Secretary of State for the Environment* [1989] 2 P.L.R. 47. But in *Northumberland County Council v. Secretary of State for the Environment* [1989] J.P.L. 700 the court took the doctrine some way further, holding that it was a material consideration in determining an opencast mining application that economic advantages would accrue in the form of profits that would be invested in new deep mines and balance British Coal's financial position in the North-east of England. The court ruled that to be a material consideration, the expenditure of the scheme's profits must in some way relate to land, but that it need not be the application site, nor need it even be identified.

Two important ministerial decisions involving "enabling development" are reported at [1990] J.P.L. 453 (Broadlands Estate in Romsey, Hampshire: general principle approved, but appeal dismissed), and [1990] J.P.L. 622 (Croome Court, Worcestershire: enabling development permitted to allow regeneration of listed buildings).

- (6) *planning gain*: this highly complex topic is closely related to the preceding two heads. The term has no precise definition, but is generally understood as encompassing the situation where an applicant offers, or the local planning authority requires, some form of additional benefit as an inducement or precondition to the granting of planning permission. Some instances are entirely legitimate, such as where an applicant undertakes to contribute towards the cost of off-site infrastructure, the need for which is generated by his development. But other instances are clearly not. An applicant may offer an inducement which is quite unrelated to the proposed development, such as leisure facilities elsewhere in the authority's area, as an attempt effectively to buy planning permission; or an authority may demand some unrelated benefit as its price for selling permission. Neither is a material consideration under this section, and the validity of any planning permission granted on such a basis may be challenged by application for judicial review. A common mechanism for recording planning gain deals has been the s.106 (formerly s.52) agreement, and there has been some judicial review of the scope of that power. Planning agreements gave way in 1991 to planning obligations, introduced by the Planning and Compensation Act 1991. But these are still only the mechanisms through which arrangements can be made between developers and local planning authorities, and there is still little clear guidance on the appropriate division of financial responsibility for providing physical and social infrastructure between private and public sector, and hence the extent to which planning gain can amount to a material consideration under this section. The Court of Appeal's P70.14

the fact that the granting of permission in this case may lead to other applications being made should not be accepted as a sufficient reason for refusal."

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In *Poundstretcher Ltd. v Secretary of State for the Environment* [1988] 3 P.L.R. 69 the High Court (Mr. David Widdicombe Q.C. sitting as Deputy Judge) reviewed the authorities, including *Anglia Building Society v. Secretary of State for the Environment* [1984] J.P.L. 175 and insisted that mere fear or generalised concern of a precedent effect would not normally be enough; there would have to be some evidence for reliance on it. The court recognised, however, that in some cases the facts would speak for themselves, as in the common case of the rear extension of one of a row or terrace of dwellings, where it may be obvious that other owners in the row are likely to want extensions if one is permitted.

- (8) *the planning history of the site*: an existing planning permission may be a material consideration in determining an application (see e.g. *Spackman v. Secretary of State for the Environment* [1977] 1 All E.R. 257); even, though with less force, if it is time-expired (*South Oxfordshire District Council v. Secretary of State for the Environment* [1981] 1 W.L.R. 1092, not following *Peak Park Joint Planning Board v. Secretary of State for the Environment* [1979] J.P.L. 618). But there is no duty to have regard to the established use of the site if the established use rights have been lost upon the making of an unauthorised use change (see further the Commentary to s.56: *Weitz and F.D.S. (Market Research) Ltd. v. Secretary of State for the Environment* [1985] J.P.L. 171. The planning authority are entitled, and indeed obliged, to have regard to the "fall-back" position, i.e. what the applicant could do without any fresh planning permission (*Small Pressure Castings Ltd. v. Secretary of State for the Environment* (1973) 222 E.G. 1099; *Snowden v. Secretary of State for the Environment* [1980] J.P.L. 749). In *Tower Hamlets London Borough Council v. Secretary of State for the Environment* [1983] J.P.L. 315 planning permission had been granted in 1969 for the change of use of a listed

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residential property in a conservation area to use as offices, in order to render its restoration and improvement economic. Restoration was subsequently carried out without the change of use taking place, and an application for renewal of the 1969 permission was refused. An appeal to the Secretary of State was successful, and the High Court upheld that decision on the ground that although the restoration had already taken place and therefore provided no justification for departing from planning policy (though it was still a factor which might be taken into account), the applicant's right to change the use within the limited period available before the expiry of the earlier permission was a relevant factor. Similarly, in *Newbury District Council v. Secretary of State for the Environment* [1983] J.P.L. 381, the court rejected the converse submission that regard should be had only to the full potential lawful use of adjoining premises, and that their actual use should be ignored. P70.16

- (9) *ulterior purpose*: permission may not be refused for the ulterior purpose of inducing a developer to contribute a benefit or advantage which should be provided by the local authority or another authority (*Westminster Renslade Ltd., supra*); nor for the ulterior purpose of protecting the authority's own rights of occupation under the Landlord and Tenant Act 1954 (*Westminster City Council v. British Waterways Board* [1985] A.C. 676). But it is no breach of this principle for an authority, seeking to achieve the redevelopment of an area, to grant planning permission for residential use hoping ultimately to bring about the relocation of existing industrial users in the area, provided their action is prompted by a genuine desire to see the site developed and not a device whose real purpose is to create trouble for existing users and force them out: *R v. Exeter City Council, ex p. JL Thomas & Co. Ltd.* [1990] J.P.L. 129. P70.17
- (10) *predetermination, bias and conflict of interest*: see further below at para. P70.29.
- (11) *personal hardship*: personal circumstances or "the human factor", are always present in the background to the consideration of the character of land use, but may sometimes be given direct effect in development control as an exceptional or special circumstance (*Great Portland Estates plc v. Westminster City Council* [1985] A.C. 661.) They may be weighed in the balance whenever other planning considerations are not decisive: see e.g., *London Borough of Tower Hamlets v. Secretary of State for the Environment* [1983] J.P.L. 315, *New Forest District Council v. Secretary of State for the Environment* [1984] J.P.L. 178; *Tameside Metropolitan District Council v. Secretary of State for the Environment* [1984] J.P.L. 180. Similarly, it would be right, in a case where other planning considerations did not compel a different view, to bear in mind that the proper application of planning policy required that it should be fairly administered; and that the planning history of a site might require the grant of permission to achieve fairness, where all other things are equal: *Ynys Mon Isle of Anglesey Borough Council v. Secretary of State for Wales* [1984] J.P.L. 646.
- (12) *distinguishing between particular occupiers*: it is the use of the land, and not the particular purpose of a particular occupier, to which planning control is directed (*East Barnet Urban District Council v. British Transport Commission* [1962] 2 Q.B. 484, at 491, per Lord Parker C.J.). It is not permissible therefore for a local planning authority to use its powers of granting or withholding planning permission simply to preserve some particular tenant's occupation of the premises (see e.g., *Westminster City Council v. British Waterways Board* [1985] A.C. 676). But providing there is a proper purpose for a P70.18

policy, it is not a valid objection that a consequence of it will be the protection of particular occupiers (*Great Portland Estates plc v. Westminster City Council* [1985] A.C. 661).

- P70.19 (13) *the availability of alternative sites*: this is capable of being a material consideration in determining a planning application, but it may not be relevant in every case. Land may be developed in any way which is acceptable for planning purposes; and the fact that there may be another site (whether or not within the applicant's ownership) upon which the development could be yet more acceptable for planning purposes would not justify the refusal of permission upon the application site: *Trusthouse Forte Hotels Ltd. v. Secretary of State for the Environment* (1986) 279 E.G. 680. Where, however, the proposed development is bound to have some adverse environmental effects and where a major argument for the development is that the need for it outweighs those disadvantages, then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere: see e.g. *Rhodes v. Minister of Housing and Local Government* [1963] 1 All E.R. 300, 302; *Ynystawe, Ynyforgan and Glais Gypsy Site Action Group v. Secretary of State for Wales* [1981] J.P.L. 874; *Prest v. Secretary of State for Wales* [1983] J.P.L. 112. It is not, however, possible as a matter of law to say that the existence of an alternative site is decisive in any given case where environmental need points against the grant of permission; it is a question for the local planning authority or the Secretary of State in the first instance as to whether or not the situation requires alternative sites to be considered, and only if the view taken is unreasonable will the courts interfere: *Rhys Williams v. Secretary of State for Wales* [1985] J.P.L. 29 and *Vale of Glamorgan B.C. v. Secretary of State for Wales* [1986] J.P.L. 198. Simon Brown J. suggested in *Trusthouse Forte Hotels Ltd. v. Secretary of State for the Environment* (1986) 279 E.G. 680 that instances of this sort might include airports, coalmining, petrochemical plants, nuclear power stations and gypsy encampments; but not normally dwellinghouses, offices or superstores (see e.g., *R. v. Carlisle City Council, ex p. Cumbrian Cooperative Society Ltd.* [1986] J.P.L. 206). In *Greater London Council v. Secretary of State for the Environment and London Docklands Development Corporation* [1986] J.P.L. 193 Oliver L.J. in the Court of Appeal suggested that a duty to examine comparable sites might, as a general (and non-exhaustive) test, arise in cases having the following characteristics: first, the presence of a clear convenience or advantage, to the public, in the proposal under consideration; secondly, the existence of inevitable adverse effects or disadvantages to the public or to some section of the public in the proposal; thirdly, the existence of an alternative site for the same project which would not have those effects, or would not have them to the same extent; and, fourthly, a situation in which there could only be one permission granted for such development, or at least only a very limited number of permissions. But there is no duty on the planning authority or the Secretary of State themselves to "rout around" to see whether there may be an alternative site (*Rhodes v. Minister of Housing and Local Government* [1963] 1 All E.R. 300). And it may be possible for the authority to decide in certain cases that a particular need can be satisfied elsewhere than on the appeal site even though no other specific sites are identified and established as preferable alternatives. In *Trusthouse Forte Hotels Ltd. v. Secretary of State for the Environment* (1986) 279 E.G. 680, Simon Brown J. summarised his views on this point in the following propositions:

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of being taken into account as a material consideration in development control, including the policy of government departments other than the Department of the Environment (see e.g., *Kent County Council v. Secretary of State for the Environment* (1976) 33 P. & C.R. 70, policy of Department of Energy) provided the other Department has not in effect dictated the decision under this section (see e.g., *Lavender (H.) and Son Ltd. v. Minister of Housing and Local Government* [1970] 3 All E.R. 871).

Although the Secretary of State for the Environment is no longer subject to the duty formerly imposed on his predecessors by s.1 of the Minister of Town and Country Planning Act 1943 to "secure consistency and continuity" in land use policy (the section was repealed by S.I. 1970 No. 681), the policies promulgated by him provide a framework for decision-making by him, by his inspectors and by local planning authorities in accordance with the principles discussed above. His policies filter through to local planning authorities both through the forward planning system and through development control. Policy is communicated to local planning authorities principally by way of circulars but also by way of ministerial statements, White Papers, appeal decisions and other means. Unless issued under some specific statutory authority (such as a Direction issued under the Act or under the General Development Order, for example) a circular is not formally binding on a local planning authority. It will, however, be taken into account by the Secretary of State on appeal from their decision or on a called-in application, and the interpretation and application of the policy (although not its merits, nor the merits of the application) is liable to be reviewed in the courts. The following propositions can be suggested:

(i) a local planning authority and the Secretary of State are entitled to adopt a policy and apply it in decision making as a material consideration under s.70, providing that it does not fetter their duty under that section to have regard to the provisions of the development plan, so far as material, and to any other material considerations;

(ii) a policy cannot convert an immaterial consideration into a material consideration, or vice versa: the language of the policy must always give way to the requirements of the statute;

(iii) if a policy is a lawful policy, and its provisions are material to the application then the decision-making body must have regard to it;

(iv) a policy need not be promulgated in any particular fashion for it to be taken into account. Policy may be made on an ad hoc basis, and an identifiable consistent trend of past decisions may demonstrate, or constitute, policy. But to this principle there are important exceptions. First, the courts have stressed that inspectors are not themselves policy makers, and that their decisions should not therefore be regarded as precedents: see e.g., *Sears Blok & Co. v. Secretary of State for the Environment* [1980] J.P.L. 523; *Chelmsford Borough Council v. Secretary of State for the Environment and E.R. Alexander Ltd.* [1985] J.P.L. 316. Second, although any statement of policy may be taken into account, the weight to be attached to it may vary in accordance with the formality of its expression. In *Dinsdale Developments Ltd. v. Secretary of State for the Environment* [1986] J.P.L. 276 an attempt was made to persuade the court to accept as "policy" an after dinner speech made by the then Secretary of State. The

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court reluctantly looked at the material, though doubtful whether it was admissible, but found that it did not assist the appellants' case. Thirdly, proposals for new policies which are still in the formative stage cannot yet constitute policy, as where a circular is issued in draft on a genuinely consultative basis: see *e.g.*, *Pye (J.A.) (Oxford) Estates Ltd. v. Secretary of State for the Environment and West Oxfordshire District Council* [1982] J.P.L. 577. But that may not always be the case, and it may be relevant still to take a draft circular into account as reinforcing a policy point (see *e.g.*, *Richmond upon Thames London Borough Council v. Secretary of State for the Environment* [1984] J.P.L. 24), and to take into account advice on an issue which has been given independently to the Secretary of State, though is not yet government policy: see *e.g.*, *Westminster City Council v. Secretary of State for the Environment and City Commercial Real Estate Investments Ltd.* [1984] J.P.L. 27 (Property Advisory Group's report on planning gain). Certainly a policy contained in a structure plan or local plan which is in the course of preparation is capable of being a material consideration though the weight to be attached to it may not be as much as if the plan had been finally approved or adopted. The question arose (but was not determined) in *R. v. West Glamorgan County Council, ex p. Morris* [1992] J.P.L. 374 whether a non-statutory policy which ought arguably to have been included in a statutory development plan could lawfully be relied on in determining a planning application. Perhaps the better approach is to ask, following *Westminster City Council v. Great Portland Estates plc* [1985] A.C. 661 whether the omission of the policy invalidates the plan (for which a challenge would need to be made within six weeks of the plan's approval). Although it would be insufficient simply to rely on the non-statutory policy and nothing more in development control, if the considerations comprised in the policy are material to the determination of the planning application, then they must, irrespective of whether they are set out in a form other than a statutory development plan, be taken into account;

(v) the decision maker need not adhere slavishly to the policy, and indeed to do so would be in breach of the requirements of s.70 to have regard to all material considerations. But if he chooses not to follow it then he must give sound and clear cut reasons why not, "in order that the recipient of his decision would know why the decision was being made as an exception to the policy and the grounds upon which the decision was taken" (*per Woolf J. in Gransden (E.C.) & Co. Ltd. v. Secretary of State for the Environment* [1986] J.P.L. 519; upheld by the Court of Appeal [1987] J.P.L. 365; *Horsham District Council v. Secretary of State for the Environment* [1992] 1 P.L.R. 81, 88 (C.A.)). So too if the decision is made in accordance with policy: the duty to give reasons on appeal is as rigorous whether policy is being followed or breached. The decision maker should make it clear whether the decision is made in pursuance of the relevant policy or as a departure from it: *Stephenson v. Secretary of State for the Environment* [1985] 1 E.G.L.R. 178. The reason given by the Secretary of State or his inspector must be adequate: it is not sufficient, for example, to assert that the proposed development fails "in a number of important respects" to meet the requirements of a policy (see *e.g.*, *Arlington Securities Ltd. v. Secretary of State for the Environment* [1985] J.P.L. 550). *A fortiori*, if the

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decision maker is purporting to follow a statement of government policy in preference to the local plan for the area: see e.g., *Surrey Heath Borough Council v. Secretary of State for the Environment* [1987] J.P.L. 199; (1986) 53 P. & C.R. 428 but cf. *Wycombe District Council v. Secretary of State for the Environment* [1988] J.P.L. 111;

(vi) it is not essential for an inspector or the Secretary of State to cite each material policy in order to establish that regard has been had to it. Policies form the background to every planning appeal, and it can be assumed that a policy has been taken into account unless it can be clearly demonstrated that it must have been ignored: *Hatfield Construction Ltd. v. Secretary of State for the Environment* [1983] J.P.L. 605 but c.f. *Wesson v. Secretary of State for the Environment* [1992] 1 P.L.R. 36;

(vii) in order to have regard to a policy, the decision maker must have interpreted it properly: "if the body making the decision failed properly to understand the policy, then the decision would be as defective as it would be if no regard had been paid to the policy" (*Gransden (E.C.) & Co. Ltd. v. Secretary of State for the Environment* [1986] J.P.L. 519; upheld by the Court of Appeal [1987] J.P.L. 365). Thus the interpretation of policy becomes a question of law. In *Surrey Heath Borough Council v. Secretary of State for the Environment* [1987] J.P.L. 199 (and see also *E.L.S. Wholesale (Wolverhampton) Ltd. v. Secretary of State for the Environment* [1987] J.P.L. 844) the court held that an inspector had misunderstood DOE Circular 14/85, because although he had had regard to national employment considerations, he had not had regard to local considerations and had no evidence before him as to what they were. In the judgment of the court, a proper interpretation of and implementation of the circular in relation to any individual planning application had to involve an evaluation of the local as well as the national need for economic regeneration and the inspector's misinterpretation of it meant that his decision had to be quashed.

(viii) if proper regard has not been had to the policy, the court will quash the decision unless the situation is an exceptional case where the court is satisfied that the failure to have regard to the policy has not affected the outcome, and the decision would have been the same in any event: see e.g., *Gransden (E.C.) & Co. Ltd. v. Secretary of State for the Environment* [1986] J.P.L. 519, and cf. *Richmond upon Thames London Borough Council v. Secretary of State for the Environment* [1984] J.P.L. 24; *Westminster City Council v. Secretary of State for the Environment and City Commercial Real Estate Investments Ltd.* [1984] J.P.L. 27. (ix) if there has been a change in policy, the decision must relate to that changed policy, even although it may not have been known to the parties at the time of the public inquiry, or may not have been issued until after then (see e.g., *Newham London Borough Council v. Secretary of State for the Environment* [1986] 53 P. & C.R. 98).

- P70.21 (15) *racial discrimination*: by virtue of the Race Relations Act 1976, s.19A (inserted by the Housing and Planning Act 1986, s.55) it is unlawful for a planning authority (including an urban development corporation) to discriminate against a person in carrying out any of their planning functions. That provision supplements the general statutory duty of local authorities under the Race Relations Act 1976, s.71, to make appropriate arrangements with a view to securing that their various functions are carried out with due regard to the need—

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