

ERUV APPEALS - ERIC FIBBENS' COMMENTS ON POINTS RAISED BY THIRD PARTIES

1. GOVERNMENT POLICY

1.1 There is a reference to PPG 12 "Development Plans and Regional Planning Guidance", and in particular to paragraph (presumably section) 4. I do not understand this reference. Certainly I can see no conflict between the appeal proposals and the advice given in PPG 12.

2. UDP POLICY

2.1 In addition to those policies referred to by the Council or in my evidence reference is made to various additional UDP policies as follows:-

T3.4 (UDP page 23). This is an irrelevant policy which encourages proper maintenance by owners of buildings within Conservation Areas.

T5.1 (UDP page 25). This is a policy to the effect that the Council will exercise particular care in respect of the design and form of development proposals in the Bishops Avenue N2 and the West Heath/Golders Hill area NW11 where there is a special need to co-ordinate control across Borough boundaries. This policy is set in the context of explanatory paragraphs relating to the height and intensity of new development which should conform to existing development in the area and stressing the need to protect trees. In my opinion this policy adds nothing to the general Conservation Area policy context in respect of these appeal proposals.

T8.1 (UDP page 28). This policy relates to telecommunications equipment and refers to satellite dishes, microwave antennas, radio masts and other telecommunications apparatus. It does not seek to ban such apparatus but seeks to minimise the effects of such apparatus on the external appearance of buildings or other structures. It is not relevant to these appeal proposals. To the extent that an inference might be drawn, the policy adds nothing since it implies judgement concerning the impact of proposals on the character of a locality.

05.2 (UDP page 33). This policy relates to proposals on or near a site with a Nature Conservation interest and indicates that development proposals should not adversely affect Nature Conservation value. I am aware of no substantive evidence to suggest that these Eruv proposals will have any harmful Nature Conservation impact. (See Appendix FFA 6).

E1.1 (UDP page 33). This policy seeks to control development to avoid the introduction of intrusive features or changes to the open landscape which would adversely affect its landscape quality. It is set in the context of explanatory paragraph 3.4.15 which refers to visually intrusive features such as transmission masts, electricity pylons, or the appearance of buildings bordering open space. In that context it does not seem to me to be relevant to these appeal proposals. Again, to the extent that an inference might be drawn, the policy adds nothing since it also relies on judgement concerning what is intrusive.

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M6.1 and M6.2 (UDP page 90). These policies relate to road safety and facilities for pedestrians. They relate to highway matters and, as such, the views of the Highway Authority are particularly relevant. There is of course no highway safety reason for refusal in respect of these appeals and there is no Highway Authority objection raised.

2.2 None of the objectors refers to the Council's positive Community Services UDP Chapter 5, nor to the positive policies ERG1.1, 1.2 and 1.3 to which I have referred in evidence.

3. METHOD OF CONSTRUCTION/CONSENT OF ADJOINING OWNERS

3.1 Basic information concerning the proposed method of construction/installation is provided in correspondence from Alan Perrin who is a member of the appellants' team.

3.2 It is suggested that the appellants will need to serve a series of Party Wall notices and obtain consent from each riparian landowner. I have taken advice on this subject from a Chartered Building Surveyor colleague experienced in Greater London over the past 25 years. Martin Sumner is a specialist Party Wall surveyor. My confidence in his abilities is such that he has over the years dealt with my private business.

3.3 Martin Sumner confirms that the Party Wall procedure under the provisions of the London Building Acts does not relate to this area and that there is no comparable legislation or procedure in force. He also confirms that he knows of no basis for riparian owner action against the appellants in the circumstances envisaged; provided of course that no private rights of access, air space or mains supplies are infringed, and no support is taken to boundary structures. No such problems are envisaged.

3.4 Martin Sumner also endorses the proposed method of construction/installation, but recommends a specific dimension for the gap between each pole and the inside edge of the drilled hole to ensure proper ramming/compaction of the support concrete. This detailed recommendation is commensurate with the terms of the application proposals.

3.5 The Martin Sumner correspondence can be made available as Appendix FFA 8.

4. ERUV WIRE - WIND LOADINGS

4.1 Alan Perrin confirms that trial samples of the intended Eruv nylon monofilament 0.3mm wire have been strung between lamp standards in the car park at 296 Golder Green Road since April 1993. Those trial lengths run through tree canopies without harm; and I know from my own observations that the wire is, for all practicable purposes, invisible.

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4.2 Concerning loading strengths I am advised by Alan Perrin that the proposed 0.3mm wire has a 10lb/metre bearing strength along its length; and that the simple tension necessary between the Eruv poles will hardly register within that load capacity.

4.3 Concerning wind loading, Alan Perrin advises in writing that by reference to the appropriate Code of Practice an inconsequential lateral loading of 5 grams/metre might be expected.

4.4 Put into layman's terms, in order to break the wire the wind would need to bend it into a hard acute angled "V" shape at some point. In practice, the wire cannot be stretched into more than a very gentle curve with a massive radius. Wind damage is virtually impossible.

4.5 The Alan Perrin correspondence can be made available as Appendix FFA 9.

5. NON-PLANNING ISSUES

5.1 Much of the third party evidence relates to non-planning issues concerning, for example, the concept of an Eruv or the greater part of the Eruv boundary, neither of which constitutes development.

5.2 Many of the third party concerns relate to matters of highway safety, which are not at issue given the absence of any such reason for refusal and the absence of any Highway Authority objection.

5.3 There is no third party evidence to suggest the proposed method of construction/installation is unacceptable or untypical.

5.4 There is a suggestion that the proposed poles could encourage burglary. I cannot treat such a suggestion seriously.

6. PLANNING POINTS

6.1 To the extent that the third parties do address the substantive visual amenity issues raised in the reasons for refusal they add little to the debate; and nothing to the detailed evidence of the Council's witnesses.

6.2 The third parties tend to apply the wrong tests; eg

- there seems to be an inference that planning permission should only be granted where a large number of people would benefit - whereas the opposite is the case - refusal should only occur where unmitigated harm would be caused.
- Sec 54A - No reference to Council's positive policies ERG 1.1, 1.2 and 1.3.

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- suggestions that planning permission may only be granted if proposals have a positive visual impact - whereas the opposite is the case - refusal can only be justified if the impact is an unmitigated negative. Even the Sec 72 Listed Buildings Act Conservation Area test merely requires "preservation" of character, ie "no harm".

7. OTHER SPECIFIC COMMENTS

7.1 There is a suggestion that existing street furniture in Barnet is well designed for its purpose. The proposed Eruv street furniture has been designed taking existing lamp posts as the primary reference. It therefore seems to be agreed that the style of the proposed poles is in character with the established context. This implies agreement with my view that the proposals comply with UDP Policy T1.1

7.2 There is a suggestion that the poles at site 08C will block the access to No. 41 Hermitage Lane. This is not the case, but any doubts could be dispelled by a "detailed siting" condition.