

Final Speech.The Construction of the Law.

Some arguments addressed to you about
construction of the Law.

1.50 Defining New Trade Rev.
Def. address design.
has been licensed by
any one

Position of L. Boro that by resolution dated
30 June 1992 the Public Works Unit have accepted
principle of construction of the poles in highways controlled by
the Borough. giving consent under Section 178 & 181 of the
Highways Act 1980.

The licence is subject to a number of safeguards
to protect the public relating to design, the apparatus
of public utilities, the giving of indemnities, maintenance
payments and the provision of a bond.

The approval of the DOT is also required
for the highways for w. responsibility.

Many questions of law and implementation
which arise are therefore matters to be dealt with
in the future if p. pers were to be granted.

Clearly until the terms are met of B.C. the consent
cannot be implemented.

Now of B.C. that inquiry should
proceed purely on basis of w. poles & lines should
or should not have p. pers. The legality or otherwise
of the development is a matter to be tested elsewhere.

An issue in construction does arise over question of whether sections of poles and wires will affect trees and require their topping.

matter subject of advice given to members: see Scott s.g. 08C, 09, 19, 33. : Davis N°13 p. 16. 17.

Suggested by appellants that no topping required and poles and wires can be "routed" through the trees, although the wire needs to remain taut in a line.

That a matter for you to resolve in such instances on site including the effect on roots of a foundation.

Committee believe such issue be resolved: compelled by appellants' condition in two respects and refusal to accept proposed limiting Order of B.C. to give effect to their letter.

2nd Application.

The Wato case indicated that there was power wires to be strung from lamp posts in Willowood Rd. In this sense the 2nd application is not capable of implementation, while the first is having been granted in principle.

Issue of Safety: M^r Hornoff. Concern of the Board but matter primarily for Public Works Dept. & so treated in the decision.

A natural understatement. Inquire a matter for you of course

The defining Issues.

Key Issues

- (i) whether the creation of the poles and wire would be detrimental to the street scene on the basis of VDP policies;
- (ii) whether the creation of the poles and wire would be detrimental to the Hampstead Garden Suburb Conservation Area having regard to the need to conserve and preserve it;
- (iii) whether if the development is so detrimental, there is an over-riding need for the development which outweighs the harm done;
- (iv) whether there are any personal factors of an exceptional kind which are material and in a fully-balanced decision outweigh any considerations justifying either the grant or refusal of consent.

Question 1.

It is fundamental to the development plan to secure the maintenance and improvement of the environment of the Borough of Barnet and that set out in the guiding principles.

The policy is introduced in Policies G1 (para 2.3.4), G2, G3.D., and G.18.

The policies prescribe against the purpose to maintain and improve the environment that all relevant aspects of development are to be considered, that important local issues are to be considered and development must be compatible with the residential environment.

One of the policy that proposals outside the C. Area do not maintain or improve the environment of the Borough but do material harm to the street scene. The degree of harm varies on a scale of annoyance from barefoot ramps to materially so. Some sites where harm is significant but generally can be prevented indicates material harm could be done in many places.

Because matter one of usual impact views on matter are very subjective - matter for your impression on site.

The outcome of Councilor Mrs. Scott.

That on 1st application the officers recommended approval and on the second reiterated their views but made no recommendation, because of the different views expressed by Councilors in the earlier application. Councilors chose to differ from officers. But entitled to do so. Certainly on issue such as this where experienced members know their own in detail and can judge whether what may be seen is acceptable. Mrs. Scott indicated she had conveyed under the rules but before the Council decision and the appeal.

Some attempt was made to suggest that other considerations influenced the Council's decision rather than those of planning. As she pointed out, while "non-planning" issues were raised at once, Urban was at pains to establish relevance. When members vote, no reasons are given and so quite impossible to assert that members did not have an understanding regard to proper considerations under the Act. In relation to LAs maxim officers "~~main~~^{main} ~~rule~~ ^{presumption} rule of law": there is a presumption, unless proved to the contrary, that a public body acts lawfully. You should assume that.

There is of course no doubt taking
on street furniture, such was admitted by Mr. Scott.
Much of the placing of street equipment or equipment for
activities is covered by the General Development Order
and permission is not required. However there is a
growing consciousness of the undesirability of clutter particularly
in central areas, as Mr. Mac Scott indicated. She
is also indicated a firm dislike of it. That class of
course made her quite conscious of the harm likely from
the proposal and its acceptability and I suggest lends
weight to her view because it is a matter upon which
she clearly has thought deeply. Throughout she gave
her evidence with detachment and objectivity and I
ask you on examination of the individual sites to give
due weight to it.

Examination of the detailed evidence
of Mr. Mac Scott and Mr. Fisher does reveal divergences
which you must resolve. One aspect of Mr. Fisher's
evidence must however be noted - he is invariably
silent about the effect on and relationship of the
proposals to private houses. Clearly while detriment to
an individual property with no harm to the public would

generally not be a legitimate cause of objection. The effect on the amenity of views from leaseholders windows taken in the context of the street scene is a matter to be considered. There is no evidence it has been weighed by Mr. Fildes and I suggest that must effect the weight to be attached to his conclusions. He further has not taken into account the effect on views being seen and to be affected. Spoken on that view you will take at the sides.

If you accept the assessment made by Mr. Scott, the proposals are detrimental to the street scene and are in conflict with the UDP policies. That is an up to date Plan and by virtue of Section 54A the matter should be determined in accordance with the Plan, unless material considerations indicate otherwise. I shall turn to these latter.

Question 2.

The Stamphead Garden Suburb, as was accepted by Mr. Fiskens was "an exceptional residential environment in both buildings and man-made landscape and was a Conservation Area of Outstanding Architectural and Historic Interest under the Act. The Stamphead ridge to the South East facing to Wildwood Rd was also an area of special character defined by the Greater London Development Plan.

There is therefore no doubt that any development within this area needs to be approached with the greatest care to see that no harm is done which impairs the duty 'to preserve and enhance the character' of this area. That minor changes may do so is recognised by the Article 4 Direction which applies to the Area. Such minor changes can of course be affected by street furniture and the draft PD615 referred to in Mr. Davies' proof indicates the need to recognise that.

Wildwood Road where 7 poles are to be erected in the first application and 2 in the second is 'the most sensitive location' in Mr. Davies' view. Again it is a matter to be assessed on the basis of the views expressed by Mr. Fiskens & Mr. Davies

20 14 is of course on Stamphead Lane in the Hedge Area of Special character.

The Borough Council believe that within the Garden Suburb the minor changes brought about by these poles will be as detrimental and sometimes more so than some controlled within the Article 4 Direction, particularly the effect in the semi-rural environment of the Stamphead Heath Extension. Councillor Auer with long knowledge of the suburb gave you his views on this matter. He has been consulted as a member of the joint community in relation to the Towns proposal but as he pointed out based on his experience as a Justice of the Peace - he has long experience of separating what are his personal views from the matters relevant to his decision and I ask you to accept that he has so done in this case.

The Suburb is important. If you accept the Councils case, the proposed breaches Policies G3, T2.1 and T3.1 of the UDP and under Section 54A raise a presumption against the development. It must be done: the C. Area is not 'preserved & enhanced' and the LBC asks you not to find.

Answer 3.

It will raise the effect of the material considerations which indicate otherwise.

Mr. Folsom says to rely on some policies in the Plan which were directed to encouraging the provision of facilities for different social groups and minorities. He referred to Policies EEC 1.1, 1.2, and 1.3. and censured the Council for failing to have regard to them. It is however true of ABC that policies are irrelevant.

Policies must be construed in the context in a common-sense way. Scrutiny of paragraphs 5.1.18, 5.2.15, 5.4.14., make it quite clear as well as the text itself that these policies are concerned with the provision of new meeting places, premises for use, buildings and sites. They are not directed to supporting the erection of poles or other equipment in public streets and are not phrased generally to cover such developments. There is therefore no policy support that can assist the proponents of the Law to suggest that a need arises which is recognized in the Plan text itself. That is not to say need is irrelevant or is not a material consideration otherwise.

The Issue of Need.

(1) Proper to take acct of 'need' to override p. effects.

C. of definition "interestly predominant".

Needs may be both public & private.

Needs for p. needs e.g. need for Estm College for a very late
change > late. Private need - but one which has scope of p. system

Ford Lady Estm in G. Baer near Basilan.

A thanks for thanks bello: truer.

Has to assess the character of the need -
its quality & quantity.

No reason in principle why a benefit to religious
persons is not a need to be assessed.

But it must be assessed & given weight on
a scale.

"Necessity to convenience."

C. of fact w. nature -
a necessity or convenience
have to others.

Less of course amenity of agent - less 'need' weight
w. has to be proved: the more the
more.

Law assess (i) direct res. benefited
(ii) 'quality' of impression for indirect.

In terms of direct numbers - only a std. effect.

LC. does not think matter should be assessed
based on broad numbers sympathetic to the purpose
of the Env.

Matter must be looked at realistically accepting

if Accept benefit
from - not mere
convenience?

that (i) firms involved may be incapable of walking
the mile to synagogue;
(ii) firms firms mothers with young not walking
children equally cannot so.

Before not so much weight to be put on mere
social visiting - which anyway can be done on Sunday
which remains part of Jewish weekend.

No numbers provided - hence done an assessment based

PTO. Here

on the 'congregation' of the providers and

the Kalno Rept. on orthodox practices.

Arrive at base figure.

Accept: indirect benefit for 'social purpose' right to beyond
that and be used by other congregations.
No reason however to think the problem would be greater.

LC. leaves to S/S. question of what is order of need
between the two points
but if the minimal assessment is the more
realistic, the need argument is not strong in
assessing the harm done to the environment.

The probable truth is that the need will long
compare to larger numbers the numerous but equally
the max. figures of benefit urged by the appellants
based on the Kalno Rept. is without substance,

Within the Law - there are

- (i) 15 Synagogues of House of Orthodox Hebrew Congregations
- (ii) the evolution of Synagogues [at different times]
- (iii) Independent synagogues - London Reform
 - Aylesford Synagogue
 - The House of Israel.

About 5196 households.

Divergent views - Rabbi Padua: London Hebrew Bible
Shema Yisrael.

Divergent views.
Clearly. Not positive support - but indecisive.

In the end a matter for you. No positive case where
position rests on scale of necessity or whether a matter
of convenience. Do not agree that case.

Question 4.

Question whether needs of
evidence in this inquiry is relevant has
been raised. Transient stand taken in favor
by Mr. Steele but I find matter rather more
complex and difficult.

Material Planning Considerations.

Question arises what is a material planning consideration?

The Act itself gives no guidance on what may or may not be a material consideration.

Has been reviewed by the courts. Basic principle is that of Code of J. in Shrewsbury v. Council of H.R. Ct. [1971] 1 A.C. 65 at 77.

"In principle it seems to me that any consideration ~~in a material~~ 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."

J. Portland Estates v. Westminster City C. [1985] A.C. 661.

See Gray [2] 2-3266. Lord Scarman

Policy: to protect special industrial use in City of Westminster.

"It would be ^{inherent} tendency to exclude from the content of our environment the human factor. The human factor is always present of course indirectly as the background to the consideration of land use. It can however and sometimes should be given direct effect as an exceptional and a special circumstance."

This decision appears to extend the scope of material considerations - but the 'human factor' in question still needs to be related to the use and development of land.

Basic principle formal facts are material where
decision fully balanced in special or exceptional
circumstances.

Jameside v S/S. [1982] JPL 150.

Miller v. Secretary of State.

(i) Personal circumstances (the human factor)
of objects is as relevant as that
of applicants.

(ii)

- There are no cases in the Canto dealing with, ^{whether} the relevance of religion and moral attitudes to are relevant a particular development ~~to development~~ as a material consideration.

- Relevance of gn. & moral attitudes to development considered in relation to best interests.

See DCPN. 11. Amusement Centros.

para. 2. "Planning control is confined to matters relating to the development and use of land and cannot for example take moral considerations into acc."

E. 6 p. 55011.

Moral Factors.

Princ. Point. Winter v. Secretary of State [1993] JPL 365

Views of what is clearly relevant -

Relevant judgments on only -

Lord of the Manor in NW Barchin
(North, Westland, Devon, Dame).

- (i) division of religion views about the theological justification for the crisis development; only reference to future need.
- (ii) attitudes of people to the existence of the crisis as an idea - since the development here for st. p.
- (iii) doubtful w. more just raise concern & dislike.

matter shades off after that: area of dispute whether human reaction to the police is relevant then perceived in street scene. Q. w. if usual effort contains perception, that police requires social dissatisfaction that may be taken into acc.

Not be subject of evidence (no burden) but not subject of evidence by LBB.

Amusement Centros
" Subjectivity of people at material level a planning issue - did people using an amusement Centros - first out of mind the same idea but in police "

- st. of the idea for the crisis development here for st. p.

Must not make planning decisions by reference to any racial consideration.

All planning powers must be exercised without any racial prejudice.

Case Relating to 1976. s 19A.

unlawful for authority to discriminate against any person in carrying out any of their planning functions.

State duty ^{of 2000} under s. 31 " to provide equality of opportunity and good relations between persons of different racial groups."

that cannot extend the duty to apply to grant of p. consent considerations w. relate to development v use of land.