

Proof of Evidence of: Eric David Fibbens

9/11/93

TOWN AND COUNTRY PLANNING ACT 1990

APPEALS BY UNITED SYNAGOGUE ERUV COMMITTEE

RE: INSTALLATION OF STREET FURNITURE COMPRISING GROUPS OF POLES
(USUALLY 2) CONNECTED BY HIGH LEVEL WIRE TO COMPLETE THE
IDENTIFICATION OF THE PERIMETER OF A DEFINED "ERUV" WITHIN
PARTS OF THE LONDON BOROUGH OF BARNET

PUBLIC INQUIRY: TUESDAY NOVEMBER 30TH 1993

DOE REFS: APP/N5090/A/93/224571 AND 229477
COUNCIL REFS: ERUV 1 AND 2
APPELLANTS' REFS: 1871/AP1A AND AP2A

PROOF OF EVIDENCE OF ERIC DAVID FIBBENS BSc (Est Man) FRICS DipTP MRTPI
WHO WILL SAY:-

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1 INTRODUCTION AND QUALIFICATIONS

1.1 Details of my background, qualifications and experience, and involvement with this project are set out in Appendix FFA 1.

2 THE PROPOSED DEVELOPMENT

2.1 These appeal proposals involve operational development in the form of the installation at various sites of elements of street furniture comprising individual groups of poles (ranging in height between 3.5m and 6.5m) joined together by virtually invisible thin wire (Drennan Special Matt Sub Surface Green Fly Leader fishing wire; 0.3mm diameter). Most sites involve only 2 poles, a few 3 poles, and 1 location may require 7.

2.2 The street furniture is required to provide symbolic gateways within the perimeter of an Eruv, the perimeter itself being conceptual (not dissimilar to a Parish boundary) and otherwise defined by already existing physical features.

2.3 Neither the perimeter nor the Eruv itself are the subject of these appeals. It is only the installation of the posts and wire which requires planning permission. The proposed development does not involve any change of use of land nor do any land use considerations arise. The Council's Controller of Development Services drew the Committee's attention to these points in paragraph 8.3.2 of his report on the first application.

3 PLANNING HISTORY

3.1 Because the location of virtually all the sites is in the public highway there is no planning history relevant to these appeals.

3.2 Details of the pre-application negotiations and the history of the planning applications are provided in Appendix FFA 2.

4 DESCRIPTION OF SITES

4.1 These appeal proposals are unusual in that the proposed development involves a number of different sites, nearly all of which are in the public highway. Most of the sites are in individual locations divorced from each other, but a few are visible collectively. Appendix FFA 3 provides a full description of each site and location, together with comments as appropriate.

5 ISSUES

5.1 The principal issue raised by the Council's reasons for refusal clearly relates to subjective matters of visual amenity. In essence the issue is whether the alleged damage caused by the additional street furniture will result in demonstrable harm to the appearance of the general area or each individual location sufficient to justify refusal of permission.

5.2 In addition, because five of the locations are in the Hampstead Garden Suburb Conservation Area, this question of general visual amenity needs to be addressed in the specific context of the character of the Conservation Area and the duty imposed by Sec 72 of the Listed Buildings Act 1990. It should be noted that the Council's Conservation Area reason for refusal refers to only one of the Conservation Area locations such that it is reasonable to assume that the Council are satisfied under the terms of Sec 72 LBA in respect of the other 4 Conservation Area sites.

5.3 Other material circumstances also need to be taken into account, and in particular the question of need. To the extent that damage to visual amenity or the character of the Conservation Area may be judged to result then the substantial benefits that will flow from the development need to be assessed and placed into the balance.

5.4 It is common ground between the parties that these appeals must be determined having regard to planning issues (See para 8.3.1 of the Controller of Development Services' report on the first application which reminds the Committee that they should only take into account planning matters in reaching their decision). This is the approach which I have adopted when considering the issues and in forming my views.

6 RELEVANT POLICY

6.1 Full details of relevant Government and Council policy are given in Appendix FFA 4.

7 VISUAL AMENITY ISSUE

7.1 Both Government advice and the Council's policies on this subject are of a very general nature requiring that new development looks attractive or, at worst, does not spoil or result in damage to the character of its surroundings.

7.2 In the first instance these appeals involve the simple question of whether the proposed street furniture will be out of character with the surrounding area.

7.3 Clearly the answer must be that, in principle, it will not be out of character since there is already a variety of street furniture in the streets around the various locations which are the subject of these appeals. These include lamp-posts, telegraph poles, conspicuous telegraph wires, traffic signs of many types, gantries, bridges, crash barriers, assorted public utility boxes and indicators, and prominent television aerials.

7.4 These proposals involve the erection of a total of either 85 (first appeal) or 80 (second appeal) poles to complete the definition of the 11 mile perimeter of the Eruv which will define an area of approximately 6.5 square miles.

7.5 Within this large area there are already many thousands of items of street furniture, including numerous illuminated street lamps, and telegraph poles with substantial wires significantly thicker than that proposed for the Eruv, radiating out in all directions and clearly visible to the naked eye. The proposed additional street furniture will be de minimis in the overall context.

7.6 The proposed poles will be designed taking their reference from existing street lamp-posts. They will therefore be compatible with existing contextual design elements in the general locality and will comply with UDP policy T1.1.

7.7 In the second instance it is necessary to examine whether, in the context of the general existence and acceptability of this type of street furniture, the limited additional street furniture proposed will be excessive or visually intrusive in any location.

7.8 This is clearly a matter of judgement. I have looked at each individual site and my detailed comments on each are provided in Appendix FFA 3.

7.9 There will be no need to cut or lop any tree in order to erect the poles or wires. I am able to confirm that the appellants will not at any time need to ask for trees to be cut or lopped and, if necessary, the Eruv wire can pass through the crowns of individual trees.

7.10 In my judgement the additional street furniture which is proposed will not be visually intrusive in any of the locations. There is therefore no general visual amenity ground for refusal. There will be no conflict with UDP policies G1, G2, G3, G18 or T2.1.

8 CONSERVATION AREA MATTERS

8.1 5 of the locations where additional street furniture is proposed lie in the Hampstead Garden Suburb Conservation Area which is generally residential in character. These are sites 13 (Wildwood Road), 14 (Hampstead Lane), 15 (Aylmer Road), 16 (Bancroft Avenue) and 17 (Cherry Tree Hill).

8.2 Conservation Areas almost invariably embrace built-up areas, as a result of which they are not devoid of street furniture. This Conservation Area is no exception containing a significant amount of street furniture of various shapes and sizes.

8.3 In terms of the character and amount of general street furniture located within the public highway those parts of the Eruv within the defined Conservation Area are indistinguishable from those parts outside the Conservation Area. The special qualities of the Conservation Area derive from the quality of its buildings and the spaces between them, not from any special or different approach to street layout, highway design, or amount or appearance of street furniture.

8.4 Full details of the existing street furniture in the vicinity of each of the Conservation Area locations is given in Appendix FFA 3.

8.5 The proposed wire will be invisible and will have no impact on the character and appearance of the Conservation Area in any of these locations.

8.6 In each location the proposed Eruv posts will be placed at the back of the footpath (with in ~~one~~^{some} cases a third pole in the central reservation). The poles will be inconspicuous and will merge into and blend with their background surroundings. This will also be the case in the Wildwood Road location where the Council have raised a specific Conservation Area objection. (See relevant parts of Appendix FFA 3).

8.7 In my judgement the appeal proposals will not harm the character or appearance of the Conservation Area in any of these 5 locations. In particular, there will be no harm to the character of the Conservation Area in the Wildwood Road location referred to by the Council in their second reason for refusal on the first application.

8.8 Given the Council's lack of Conservation Area reason for refusal in respect of sites 14 (Hampstead Lane), 15 (Aylmer Road), 16 (Bancroft Avenue) and 17 (Cherry Tree Hill) it would appear to be common ground that the proposals do not contravene UDP Policy T3.1 in respect of those 4 sites. It also appears that it is common ground that the second appeal proposals comply with this policy (the 2 pole version) in respect of the Wildwood Road site (site 13).

8.9 In my view there is no conflict with Policy T3.1 even in respect of the first appeal application.

9 OTHER MATERIAL CONSIDERATIONS

9.1 The UDP contains positive policies ERG1.1 - ERG1.3 which seek to look after the needs of ethnic and religious groups. Whilst the wording of these policies does not expressly refer to development by way of street furniture, the spirit of the policies, which aim to recognise and help meet the specific needs of religious minorities, may reasonably be interpreted as providing "in principle" support for this proposed development which is specifically required to meet the identified needs of a substantial religious minority.

9.2 I am not a member of the local community nor of the Jewish Community. When approached by the Eruv Committee I came to the matter as an outsider with no previous knowledge of an Eruv.

9.3 During my involvement with the appellants I have made inquiries of the Members of their Committee and their religious leaders, as a result of which I am satisfied that they have a religious duty to achieve the Eruv if they can, and that the Eruv will be extremely beneficial to the way of life of members of the community, in particular women, children and the infirm. One documentary source leading me to that view is enclosed as Appendix FFA 5, being a statement by Mr. Eric Moonman, Chairman of the Community Research Council of the Board of Deputies of British Jews.

9.4 Concerning the method of defining the Eruv perimeter, I have made exhaustive inquiries of the appellants and their religious leaders and made suggestions as to how a conceptual gateway might be achieved without recourse to poles and wire.

9.5 I am now satisfied that there is no alternative acceptable in accordance with Jewish law and that the proposed street furniture is the only way of achieving the Eruv.

9.6 The enormous benefits which will accrue to the way of life of a substantial religious minority population amount to a positive material consideration to which much weight should be given.

9.7 I am not satisfied that the Planning Committee were fully appraised of these benefits by the Controller of Development Services in his report on the first application. For example, paragraph 8.3.2 sets out the visual amenity considerations against which the proposals should be judged but fails to identify the social benefits which will result from the proposals and which the Committee should have balanced against any visual harm they felt would occur. These substantial benefits are described in Lord Jakobovits' proof and in the article from the Boston Globe dated 10/2/93 appended to it.

9.8 Finally, although no highway reasons for refusal are suggested, these appeal proposals involve land in the highway and highway matters are therefore a material consideration. In that connection I draw attention to the Highway Authority's comments on the first application as identified in paragraph 8.3.3 of the Controller of Development Service's Committee report, as follows:-

"All posts would be located on the back edge of the footpath. This accords with the Council's general policy which aims to locate all street furniture in this position to minimise danger on the public highway. The posts would not be detrimental to the free flow of traffic and general safety along the highway and are acceptable in highway terms".

9.9 There are therefore no highway grounds for refusal.

10 THIRD PARTY OBJECTIONS

10.1 I have seen the various written representations made by third parties, many of them objecting to the proposals.

10.2 In my view the majority of points raised relate to non planning issues of no relevance to the determination of this appeal. This view is shared by the Controller of Development Services who stated in paragraph 8.3.1 of his report on the first application that many of the objections raised have no direct relevance to planning.

10.3 To the extent that the third parties do raise planning points they add nothing to the Councils' case and the visual amenity and Conservation Area issues I have dealt with elsewhere in my proof.

10.4 To the extent that some third parties purport to address the question of need none of the third party objectors is in a position to deny the express wishes of the appellants and the people they represent.

10.5 To the extent that some third parties raise the question of precedence I share the views of the Controller of Development Services who stated on page 15 of his report on the first application that:-

"The Local Planning Authority need to be acting on something more than mere fear of precedent."

10.6 In any event, any future proposals for the definition of Eruv boundaries elsewhere would have to be dealt with on their individual merits.

10.7 Reference is made in the Controller of Development Service's Committee report on the first application to objections from the Royal Society of Protection of Birds (RSPB) and English Nature. The RSPB position has subsequently been clarified and correspondence confirming that they do not object to the proposals is provided as appendix FFA 6. Also enclosed is correspondence with English Nature confirming that their letters express concerns rather than objections which can be substantiated by hard evidence.

11 CONCLUSIONS

11.1 Whether these proposals will result in visual damage sufficient to warrant refusal of planning permission either inside or outside a Conservation Area is of course a matter of judgement.

11.2 In my judgement there will be no such visual damage and no conflict with any of the Council's design or Conservation Area policies.

11.3 Street furniture is an endemic feature in all urban locations, including residential areas. Poles and general street furniture are present in abundance in all streets within the Eruv and within the Conservation Area, and thick obtrusive telegraph wire is common. This is the case to a greater or lesser degree in all the proposed locations. The appeal proposals are modest in the extreme when set against this general character and are entirely consistent with the appearance and character of each of the individual sites.

11.4 The proposed Eruv poles will comprise a de minimis increase in the amount of street furniture. They will not be intrusive and will blend into the street scene; and will be out of the consciousness of all but the most sensitive of residents/passers-by.

11.5 The proposed wire will, in essence, be invisible.

11.6 The proposed Eruv street furniture is required to meet the real needs of a substantial religious minority. As such this proposed development is in accordance with the Council's UDP policies ERG1.1, 1.2 and 1.3

11.7 In my view the need for the street furniture to complete the definition of the Eruv is overwhelming and should more than balance any small damage to visual amenity that might be judged to occur.

11.8 I agree with the Council's Planning Department Officers that, as recommended in their ERUV1 Committee Report, planning permission should be granted.