

Wed, Nov 11, 1992

From the persons whose names and addresses are set out below.

To Councillors
and to such others as it may concern:.

Dear Councillor , The Eruv Planning Application

We write further to our letter of the 2nd. October in which we set out our detailed objections, which derived from a study of the proposal and application, and, an attempted summation of the public objections that have come to light, as a result of the statutory advertisement of the planning application.

The view has been expressed by Eruv supporters and others, that the law dictates strict planning guidelines as to what are material planning considerations and that some of our objections do not fall within those guidelines.

There are in fact no strict planning guidelines which the law dictates in any case (except in the special case of Conservation Areas to which we refer below) and, because of the unprecedented nature of the Eruv application , there is no relevant guidance other than the statute and decided cases.

We quote throughout, unless otherwise indicated, from Brand & Williams Planning Law

"In reaching a decision under Section 29 of Town & C.P. Act 1971 (now TPA 1990) the planning authority has to have regard to any development Plan and to any material considerations .

The essence of the system as enacted is that **the local authority has a wide ranging discretion as to what matters are to be taken into consideration in deciding each application.**

The main area of concern is over what constitutes material considerations and the amount of litigation on this point testifies to it's complexity"

There simply are no easy general answers on this point,, although, the

courts have set out principles in previous decided cases which do have a bearing on the Eruv proposal.

"The creation of a planning precedent is a material consideration" Collis Radio Ltd. v Secretary of State for Environment 1975 73 LGR."

. Every single pole, cable post sign or permanent structure whatever, on the streets now, is justified if at all, by the calculation that by purpose location, and design, it is for the benefit of the public at large. The Eruv precedent is, that public highways are to be used to install visible permanent structures, for the benefit of a separate sect, organization or community.

The whole of our letter was an examination of the nature and likely consequences of establishing this precedent .

In *Stringer v Min. of Housing* (1970) 1 WLR 1281 it was decided that **"the effect on private interests is a material consideration"**

We considered the private interests of individuals who have to face the permanent prospect of having (within one foot of the front boundary wall of their house) a pole supported by wires/cables, in aid not of a public service (light telephone etc.), but rather in aid of a sectional interest, with which they may not identify.

Further, there are also many immediately adjoining houses, one of which, is planned as being within the Eruv and one of which is without. The one within may attract a higher price, from some applicants, and this could even complicate banding for council tax.

The relative price of houses over the borough and the tendency to which the Eruv would give rise are likely to affect the private interests of all house owners. We raised these questions under headings Demographic Changes and Creation of a Ghetto.

"The materiality to be considered is a materiality from a planning point of view and in particular the question of amenity is to be considered. *Devonshire County Council v Allen Caravans (Estates) Ltd* 1962 14 P & C R 440 "

'The purpose of the Eruv is to convert the entire area within the boundary into one, notional jointly owned domain' This quotation is from the proposal. If this conversion were notional only, there would be no difficulty. Unfortunately for Barnets freeholders and road users

the conversion although primarily symbolic is effected by real posts and wires upon this most public of amenities, the highway. **The amenity to be considered therefor is the public highway itself.**

The consideration involves questions of appearance and location and we have dealt with these points, but in addition, when you consider questions of 'appropriateness' in this case, you are driven to ask whether visual religious symbols having a particular meaning for some, are 'appropriate' to the public highway, which historically contains only installations of a strictly functional nature, designed and located to provide a public service.

This symbol means different things to different people: such is the nature of this kind of symbol.

To A the Eruv symbolizes 'Sabbath limits', to B 'a desecration of the Sabbath' (a group of orthodox Rabbis have so proclaimed), to C 'a communal dividing line', to E 'the walls and gates of the ghetto', to F 'non functional street clutter' To G 'a focus for antisemitism' and so on.

This is the human factor to which Lord Scarman referred in the classic statement in this field in the case of Westminster City Council v Great Portland Estates Plc. (1985)

He said that the test of what was a material consideration, was whether it served a planning purpose and that a planning purpose was one which related to the use of the land. But he added:

'Personal circumstances....personal hardship....value to the character of the 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.....'

(Heap on Planning 1991 Edition)

We dealt with these considerations extensively in the text and under the general heading of 'Emblem of Disharmony'.

Such a symbol is primarily 'inappropriate' to the public highway across the borough. It is also 'inappropriate' in varying degrees to the land neighbouring the highway. It is the effect of the Eruv on people as users of the public highway as well as its effect on neighbouring 'residents' that is the material planning consideration.

There are no religious or ideological objections (apart from the objections of the orthodox Rabbis above referred to, which are only

material as a further example of how divisive these proposals are) .
There are no cultural objections . **There are only ' planning objections' some of which have primary regard to 'the human factor'.**

We quote these various cases merely to indicate to you the broad range of materiality according to the law , but whether you take a broad view or a narrow view there are persuasive grounds which must inevitably direct a refusal of this application.

Take one example only. The installations affect, we are informed' several conservation areas.

. Here the law does dictate strictly and clearly:

" In relation to conservation areas the law imposes a **significant restraint on the discretion of local planning authorities...**by sec 277(8) of the T&CPA 1971(now 1991).

This provision requires that in relation to any application for development attention must be paid to **the desirability of preserving or enhancing the character and appearance of a conservation area** in the exercise of powers conferred by the T&CPA

In *Steinberg v The Secretary of State For the Environment* (1989)JPL it was held that the section should be interpreted in a positive manner and that **the duty was not discharged by an inspector who considers only whether a proposal would 'harm' the character or appearance of a conservation area "**

It is quite clear ,whatever your views as to the harm done, that these poles and wires etc. will not enhance the character and appearance of a conservation area . **If you proceed strictly as directed by the law therefore, you have no alternative but to refuse the application.**

We shall be very pleased to hear from you further , should you wish to query anything in this letter or otherwise

This letter is sent by the following in alphabetical order:

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