

LONDON BOROUGH OF BARNET

APPLICATIONS

by

UNITED SYNAGOGUE ERUV COMMITTEE

Inspector	David Bushby BA (Hons) MCD MRTPI
Dates of Inquiry	30 November 1993 - 13 December 1993
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Tollgate House
Houlton Street
Bristol
BS2 9DJ

10 January 1994.

To the Right Honourable John Gummer MP
Secretary of State for the Environment

Sir

INTRODUCTION

1.1 I have the honour to report that between 30 November 1993 and 13 December 1993 I held an inquiry at the Town Hall, The Burroughs, Hendon. This inquiry was into 2 appeals by the United Synagogue Eruv Committee under Section 78 of the Town and Country Planning Act 1990 against:

[A] the refusal of the Barnet London Borough Council to permit the erection of groups of poles [a total of 85 poles] between which is suspended at high level a wire to designate the perimeter of a nominated "Eruv" at various locations within the London Borough of Barnet; and

[B] the failure of the Council to give within the prescribed period its decision on an application for a revised proposal [a total of 80 poles] in which the thickness of the wire was reduced to 0.3 mm at all locations, and the number of poles at location 13 [Wildwood Road] was reduced from 7 poles to 2, with the wire being suspended using existing lamp posts between the proposed wooden end poles.

1.2 The reasons for refusal of the first application A are:

1. 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 the policies G1, G2, G3 A and D, G18, T1.1, T2.1, T3.1, of the Unitary Development Plan.

2. 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.

1.3 With regard to the second application B, the Town Planning and Research Committee resolved on 27 October 1993 that, had an appeal not been lodged against non-determination, this second application would have been refused for the following reason:

The proposal would result in the introduction of additional street furniture which would be intrusive and detrimental to the appearance of the Hampstead Garden Suburb Conservation Area and the street scene in other parts of the London Borough of Barnet contrary to policies G1, G2, G3A and D, G18, T1.1, T2.1, and T3.1 of the Unitary Development Plan.

1.4 The second application B was reported to the Council's Public Works Committee on 5 October 1993 where it was resolved that as Highway Authority the Council would not grant consent under Section 178 of the Highways Act 1980 for use of the street lighting columns to support the wire as this would be contrary to the operational practice of the Authority.

1.5 The relevant plans for application A are within Document 5/1. Factual corrections to the plans are shown in Document 5/3. The relevant plans for application B are within Document 5/2; the letter attached to Document 5/2 from Fibbens Fox Associates dated 18 October 1993 deals with drawings omitted from these plans.

1.6 The appeals were recovered for determination by the Secretary of State by directions made on 8 July 1993 and 29 October 1993 for the following reason: the appeal relates to proposals which raise important or novel issues of development control.

1.7 The following abbreviation is used in the report:

UDP - Unitary Development Plan

1.8 This report does not provide a detailed description of the 38 locations of the groups of poles and wires in the Sites and Surroundings section. Instead, it refers in paragraph 1.9 to where a brief description of the 38 sites can be found. The report then gives the gist of the representations made at the inquiry and in the letters of support and objection, and my conclusions and recommendation. Lists of appearances and documents are attached.

SITES AND SURROUNDINGS

1.9 A very brief description of the 38 locations of the groups of poles and wire is given in the proofs of evidence of the Council's witnesses. These documents, LBB 17 and LBB 18, describe and illustrate with plans and photographs the 38 locations at which the poles and wire would be erected. The other comments in LBB 17 and LBB 18 on the impact of each group of poles and wire should not form part of this factual description; it is just the plans and photographs and first few sentences describing each location that are relevant.

1.10 In my Conclusions, in order to "set the scene" for my assessment of the impact of the poles and wires, I give a very brief sketch of each location. I decided it was better to couple this thumb-nail sketch with the assessment rather than to separate these 2 linked subjects into different parts of the report.

THE CASE FOR THE APPELLANTS

The material points are:

The appeal proposals

2.1 The appeal proposals involve operational development in the form of street furniture comprising groups of poles joined together at the top by virtually invisible wire. Most sites involve just 2 poles, a few involve 3 poles. Location 13 at Wildwood Road could involve 7 poles with appeal A. Most poles are sited at the back of pavements. The poles would vary in height between 3.5 metres and 6.5 metres with a diameter of about 75 mm. Design and material of the poles can be a reserved matter. The proposed Drennan Special Matt Sub Surface Green Leader Fly fishing wire would have a diameter of 0.3 mm. With appeal A, a condition could ensure that this type of wire was provided.

2.2 With appeal A there would be 85 poles. With appeal B there would be 80 poles, because there would be 2 rather than 7 poles at the Wildwood Road location. This second application requires the consent of the Council to use lamp posts in Wildwood Road for the wire. The Council through the Public Works Committee did not give permission for this arrangement.

2.3 There is only a need to go to appeal B if appeal A is not accepted because of the impact of 7 poles on Wildwood Road. Appeal B is a fall back application.

2.4 The poles and wires are required to provide symbolic gateways as part of the perimeter of an Eruv. The poles and wires would have a total length of about 0.66 miles [1.06 km]. The Eruv would have a perimeter of about 11 miles [17.7 km] in Barnet and would define an area of about 6.5 square miles [10.46 km]. Neither the perimeter nor the Eruv itself are the subject of these appeals.

The Eruv

2.5 On the Sabbath the Jew should suspend all creative work. There should be no action calculated to imprint dominance on the environment. For this one day in the week, nature is to be free from man's interference. Among the prohibitions of creative work on the Sabbath is moving or carrying any object from one type of domain to another.

2.6 An Eruv is an institution of Rabbinic law which permits "carrying" on the Sabbath in certain cases where it would otherwise be forbidden. The principle was established about two thousand years ago. The Eruv provides a demarcated territory with the status, in Jewish law, of a single private domain. The Eruv allows objects to be moved within it without violating the Sabbath. The Eruv would confer mobility on the elderly or disabled who need to be pushed in a wheelchair, and for parents with young children who need to use a pram. With the Eruv, it would be permissible to push wheelchairs or prams on the Sabbath. Without the Eruv, these acts are forbidden on the Sabbath. It is the pious law abiding young mothers and invalids who are house bound on the Sabbath; their religious convictions prevent them from leaving their homes.

2.7 Where possible existing structures such as river banks, railway lines, fences and walls are adopted for the Eruv. In places where there are no existing structures and there is gap of some 19 feet or more, a structure symbolising a gateway or doorway is required. In practice in modern cities this has been achieved by stringing wires between poles. The poles and wires are not religious objects. They simply mark a boundary and symbolically span gaps in the perimeter of the Eruv. The Eruv needs to be sufficiently large to allow people to visit friends, relatives, the disabled and young children. The construction of the Eruv is a powerful reminder of the sanctity of the Sabbath for those who observe it.

2.8 For the United Synagogue, the ecclesiastical authority is the Chief Rabbi. On matters of Jewish law, that authority is exercised through the Court of the Chief Rabbi - the London Beth Din. The appeal proposals have the approval of the Beth Din. Objectors are wrong to suggest there is a concept of dispensation in Jewish law. The Eruv is not a dispensation; it is a permanent feature of Jewish law. If someone reaches the synagogue in a push chair or wheelchair or car then, according to the law, they are not admissible; but while in the synagogue they would be welcomed. The test for what is admissible is whether the object to aid mobility is used as the sole means of moving oneself.

2.9 All cities in Israel have Eruv facilities. There are Eruvim in certain cities in America - New York, Boston [Document EC9], Memphis and others - and one in Melbourne, Australia and one in Strasbourg. Before the Second World War there were many Eruvim in Eastern Europe allowing Jews to carry certain objects.

2.10 The reasons why an Eruv should be proposed now in Barnet rather than at some earlier time are probably because in the past the main institutional aim of Jewish communities in the area was to establish Jewish day schools. Also, in the past, Jews had been fleeing from persecution, learning a new language and working. Now in a more pluralistic society, religious minorities such as the Jews feel more able to affirm customs and beliefs and seek facilities which were not thought of in the past. There is now a greater wish to observe the Sabbath and there is more awareness of the needs of the handicapped.

The Council decisions

2.11 The officers decided that the Eruv proposals would not cause demonstrable harm to interests of acknowledged importance. The officers were not influenced by political matters. They recommended that the first application should be approved. Their action was brave and commendable. For the second application, as there was member refusal of the first application, a recommendation was not made; but the officers' views of the proposal had not changed.

2.12 It is important to note that the professionals closest to how policy should be put into practice decided that there would be no demonstrable harm. The Council did not appoint any independent professional consultants to give advice on the appeal proposals. Objectors said that the poles and wire would be seen and that they did not like the poles and wire and therefore opposed them. This approach by objectors is wrong. Any pole could be seen; the test is whether it causes demonstrable harm.

2.13 In the decision by members there are 3 main omissions. First, the members omitted to weigh need. This has been left to the Secretary of State. There was a failure to weigh need against harm. The officers did not identify need and weigh it, but that may have been because they found they did not need to go beyond a recommendation to approve.

2.14 Second, the officers failed to identify up-to-date policies in the UDP. The policies about ethnic and religious groups in ERG 1.1, 1.2 and 1.3 are relevant as the Eruv serves a significant religious minority group. The appeal proposals are a religious matter which the UDP policies should facilitate.

2.15 Third, the members failed properly to consider the effects of poles on the trees. The lopping and topping of trees was mentioned many times and the officers were satisfied with this matter. They proposed conditions which directed that there should be no works to trees.

Relevant and irrelevant matters

2.16 The relevant considerations must concern land use planning effects. The officers' approach is correct in their report to the 24 February 1993 Town Planning and Research Committee where they cite the *Stringer v MHLG* 1971 case [LBB9].

2.17 Matters which are irrelevant to land use planning include: whether Jewish Rabbinical law should be interpreted in a particular way; private rights of way or matters dealt with under other legislation; religious considerations; and whether people feel uneasy about certain Jewish Groups in their area. It is wrong to consider prejudice on either racial or religious grounds as a planning matter.

2.18 There has been substantial and genuine opposition on moral and social grounds. Many people feel very strongly against the Eruv. But the harm is perceived rather than actual. While the letters are sincere the points made are largely irrelevant in planning terms. However hard the objectors say they are not prejudiced, they are wrong; they are prejudiced on moral, social or religious grounds. Examples from the letters include comments such as: "outdated religious fanaticism - we don't want a ghetto here", "religion is private - no visual display should be permitted", "ghetto mentality", and "the proposals would attract vandals and religious sects".

2.19 The test is whether the appeal proposals would cause demonstrable harm to interests of acknowledged interest. This should not be based on allegations. It is likely that members did have regard to irrelevant matters. One of the Council's witnesses is on the record as being interested in non planning matters in relation to the appeal proposals - the newspaper letter is evidence of this [Document EC 12]. Consequently the weight to be given to the Council decision is lessened; this was not a fully informed Council decision.

Government policy and development plan

2.20 General principles for dealing with the proposals are found in PPG 1. Circular 8/87 gives advice on control of development in conservation areas. There are 5 locations for poles and wires which lie within Hampstead Garden Suburb Conservation Area.

2.21 In case law, the definitive judgement is the House of Lords decision in *South Lakeland DC v Secretary of State and others* 1992. This rejects the Steinberg test when it says:

"The statutorily desirable objective of preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves the character or appearance unharmed, that is to say preserved".

2.22 Under Section 54A, the development plan is the Barnet Unitary Development Plan adopted in 1991. Aim (1) of the UDP in paragraph 2.3.4 sets out "to maintain and improve the quality of life in the borough". If the Eruv accords with any of this paragraph then this is a very material point in favour of it. In fact the Eruv does accord with paragraph 2.3.4 and this overrides environmental objections and policies. The Eruv would not conflict with UDP policies G1, G2, G3, G18, T1.1, T2.1 or T3.1.

Visual impact

2.23 The Council was primarily concerned with visual matters. The objectors were mostly concerned with non visual matters. The Council was overly critical of the Eruv poles in almost every location. But there is no Council policy dealing with the erection of street furniture. If certain tests are applied to the poles and street furniture it can be seen that the poles would be more benign than most street furniture. The poles have the following 8 characteristics: static, not illuminated, not multi-coloured, slim with uniform profile, vertical element only, sited at back of pavement, absence of signage and almost invisible wire. It is doubtful if any other piece of street furniture has all of these aspects.

2.24 Within the Eruv area there are already thousands of items of street furniture including numerous street lamps and telegraph poles with wires visible to the naked eye. Details of street furniture at each of the 38 appeal location are given in Document EC 25. It can be seen that within the Eruv area street furniture is commonplace everywhere, including within the Conservation Area. The Eruv poles would be de minimis in this context. The Eruv poles would not be visually intrusive in any of the locations and there are no visual amenity grounds for refusal and no conflict with UDP Policies G1, G2, G3, G18 or T2.1.

2.25 Much of the Council's case was to do with impact on trees. Councillor Davis said there would be significant removal of branches, particularly in the Wildwood Road area. But this matter had not been properly tested; the Council could have checked to see what impact the poles would have on trees. This test was not done and the effect on crowns was exaggerated. There would not be any harm whatsoever on roots or branches. There would be no need to cut or lop any tree to erect the poles or wires, but if there was a need to do so then an appropriate condition would deal with the matter.

2.26 In Hampstead Garden Suburb Conservation Area there are 5 locations - 13, 14, 15, 16 and 17 - where poles and wire are proposed. This Conservation Area contains a significant amount of street furniture which is indistinguishable from street furniture in the surrounding area. The special qualities of the Conservation Area derive from the quality of the buildings and spaces between them and not from a different approach to

street furniture. In each of the 5 locations the posts and wire would be inconspicuous and would merge into the background surroundings. For the Council the most sensitive location was at Wildwood Road in the Hampstead Garden Suburb Conservation Area. In this location the poles at the back of the pavement would hardly be noticeable from the adjoining open space. The wire would be invisible. The Council's witness for this area knew the area well, but did not have an expert's eye. The appeal proposals would not harm the character or appearance of the Conservation Area at any of the 5 locations. There would be no visual damage to the Conservation Area from the poles and wire. The proposals would not conflict with UDP Policy T3.1.

Amenity of private houses

2.27 The right test is whether the poles would cause residential amenity to be so seriously harmed that planning permission should be refused. This objection has not been made out by local residents. There is no justification for refusal on these grounds. The detailed argument on each of the 38 locations is in Document EC 25.

Need

2.28 If there is no demonstrable harm from the proposals, then need does not have to be considered. But as these proposals are to be decided by the Secretary of State the arguments about need have to be dealt with.

2.29 The objectors say that there is no real benefit or only a minimal benefit. If that was the case why would there be Eruvim in New York, Boston and Melbourne? And why would so many people have written in to support the appeal proposals? And why would two Chief Rabbis give evidence at the inquiry, and why would the Court of the Chief Rabbi [Document EC 26] say that the Eruv is a positive precept in Jewish law?

2.30 It would not be correct to get into a numbers game. It would be wrong to say "yes" if the numbers in need were substantial, but "no" if the numbers were small. There is provision in the UK for the disabled; but this is not because their numbers are large, it is because they exist. There would be benefits from the appeal proposals to the young mothers, to the elderly and there would also be people who would benefit indirectly. Those who choose to obey the Rabbinical authority set down by the London Beth Din are bound to look towards it for guidance. While this may be seen to be a nonsense by non Jews and others, it is a matter of Rabbinical law and to debate this law is not a matter for this inquiry. The attempts to belittle the benefits show the degree to which the objectors wish to denigrate the case for the Eruv.

2.31 The objector's argument about social disharmony has a superficial attraction. But if the objections are based on attitudes which discourage personal well-being and harmony then they are either unlawful in terms of the Race Relations Act, or contrary to policies which are directed at breaking down barriers in society.

2.32 In this case some objectors say that social disharmony would be caused by attracting Jews to the area. This disquieting attitude breaches the Race Relations Act and aims at social control. For some of the objections the underlying reasons are based on matters which are unlawful. There is no planning policy which seeks to disenable a planning application

on the basis of the type of person occupying an area if the proposal is allowed. Such a policy would be unlawful and against normal decency in the UK.

2.33 The cross-examination of some objectors was not pleasant. It was to expose the prejudice. This prejudice was not against Jews; it was against Orthodox Jews. The prejudice placed a sinister effect on the appeal proposals which is against common decency.

2.34 The objections on grounds of social disharmony should be rejected. The underlying reasons should not be supported. No-one would be directly affected by the Eruv. But significant numbers of people who choose to be bound by their religious convictions would benefit. A refusal of planning permission would keep those people disadvantaged who choose by conscience to follow Sabbath rules. This inquiry should not cause people to have to change their religious convictions. The proposed poles and wire would enable people to express their religion freely and openly. This is a matter of common decency.

Precedent

2.35 This objection is not understood. There would be no harmful precedent. If more Eruvim in the UK are provided, the better it would be. Each case would be decided on its merits.

Implementation

2.36 This objection has limited relevance. It is for the Council's Public Works Committee to deal with implementation. The applications are full applications. The precise location of the poles is more precise in some locations than others. The proposals should be looked at with flexibility and common sense. It is accepted that a further application would be needed if a different site is required. If the Council decide that movement of the pole would be harmful, the application could be refused and a better location found. This might apply in Finchley Road. The effect on trees could also be minimised; this could be controlled by agreement.

Conditions

2.37 From the list in Document LBB 14 condition 1 is agreed. The second sentence in condition 2 is not accepted; this together with the list of locations is an informative and matter of detail. Condition 3 is rather specific about the type of wire but is acceptable. Condition 4 should be amended to include "or as otherwise submitted to and agreed in writing with the local planning authority". This condition should not be more restrictive than the law. The Council's condition would be an unnecessary obstacle which would mean putting in a planning application to lop a branch down. It would be ridiculous to prevent a branch being lopped if this was better than moving the pole. Condition 5 is agreed. The objectors proposed condition about no development if any poles are unacceptable is not accepted.

Conclusion

2.38 The Council did not carry out a proper balancing exercise in dealing with these proposals. The officers' views should be supported. There would

be many benefits and no-one would be disadvantaged directly by the proposals. there would be minimal visual effects. The appeal proposal A should be allowed subject to conditions.

THE CASE FOR THE LOCAL PLANNING AUTHORITY

The material points are:

The planning applications

3.1 The first planning application [A] from the United Synagogue Eruv Committee was registered on 3 August 1992. Extensive consultation was undertaken. In response objection or support for the proposal was expressed in 5 petitions and over 900 letters [Documents LBB/1, LBB/2 and LBB/3]. On the 16 and 17 January 1993 members of the Town Planning and Research Committee inspected each location of the poles and wire.

3.2 Members knew that the proposals were generating strong feelings in the community. They were also aware that in reaching a decision they should only take into account material planning considerations. These considerations were seen to relate to the impact of the erection of 85 poles and wire on the local environment and the visual amenities of local residents and occupiers of other properties. Members were not concerned with the area of the Eruv as this was not development in terms of Section 70 of the Town and Country Planning Act 1990. Members formed no view on need. A full statement of need had not been submitted by the applicants. But there were representations about whether the proposal would be a public benefit or not. Divergent views were expressed. Members left the matter of need to the Secretary of State. Members decided that the question of whether the need and benefit from the proposal as far as the Orthodox Jewish community is concerned is a public benefit outweighing any visual effects was for the Secretary of State.

3.3 At the 24 February 1993 Town Planning and Research Committee there was a lengthy debate at the end of which the Committee decided to refuse application A. Both reasons for refusal related to the visual intrusion of the poles and wire.

3.4 The second planning application [B] was a revised proposal. There were 2 changes from the application A previously considered: the diameter of the wire would be 0.3 mm, and there would be 2 wooden end poles rather than 7 poles in the Wildwood Road location with the wire hung between existing lamp posts. On 5 October 1993 the Council's Public Works Committee resolved, as Highway Authority, that consent would not be granted under Section 178 of the Highways Act 1980 as the use of street lighting columns to support the wire would be contrary to the operational practice of the Highway Authority.

3.5 On 27 October 1993 the Town Planning and Research Committee was told that the appellants had lodged an appeal against non-determination. The Committee then resolved that had an appeal not been lodged it would have been refused.

3.6 Members did reach a different decision with applications A and B to that recommended by their officers [Documents LBB/9 and LBB/10]. This was done after careful consideration, and with the understanding that the Committee would have to justify its decision and show why planning permission should not be granted.

Construction of the Eruv

Licence under Highways Act 1980

3.7 The Council's Public Works Committee agreed in principle to granting a licence for the installation of posts on 30 June 1993 [Document EC5]. This licence would be under Sections 178 and 180 of the Highways Act 1980 and would be renewable on an annual basis. It would be subject to a number of conditions such as design, use of an approved contractor, relationship to other apparatus, costs, indemnity insurance and a bond. If there are problems with any of these matters the licence would not be granted.

3.8 The Department of Transport raised questions about the powers needed to erect poles in the highway. The approval of this Department would be required for those highways under its responsibility.

3.9 These implementation matters concerning the licence and the Department's questions are irrelevant to this inquiry. How the poles would be put into the highway is irrelevant. The inquiry should proceed on the basis of whether the poles and wire should have planning permission. The legality or otherwise of the development is a matter to be tested elsewhere.

Trees

3.10 The effect of the proposals on trees is a relevant construction issue. There are locations such as 8C, 9, 13, 16, 17, 19 and 33 where members think that the poles and wire would be likely to affect trees. The appellants did say at first that there would be no need to lop trees when erecting the poles. Whether that is correct is a matter of judgement to be resolved on each site. What is now strange is that the appellants in proposing a planning condition dealing with trees are suggesting that some lopping may be necessary.

Application B

3.11 This application is not capable of implementation. The Council's Public Works Committee has said it would not allow wires to be strung from lamp posts in Wildwood Road.

Safety

3.12 This matter is primarily for the Public Works Committee to deal with. While the one of the Council witnesses said one of her main objections to the proposals was on grounds of safety, this is not one of the Council's reasons for rejecting the appeal proposals. It is not part of the Council's case. It is a part of Mr Kossoff's case and is a material consideration.

Defining issues

3.13 There are 4 main issues. The first is whether the erection of poles and wire would be detrimental to the street scene in terms of the relevant policies in the Barnet Unitary Development Plan. The second is whether the erection of the poles and wire would be detrimental to the Hampstead Garden Suburb Conservation Area, having regard to the need to conserve, preserve

and enhance the Area. The third issue is whether if the development is so detrimental there is an overriding need for the development which outweighs the harm done. The fourth issue is whether there are any personal factors of an exceptional nature which are material, and in a finely balanced decision outweigh any considerations justifying either the grant of refusal or consent. This issue requires both a finely balanced judgement and special circumstances.

Impact on the street scene

3.14 Fundamental to the development plan is the aim to secure the maintenance and improvement of the environment of Barnet. This is set out in the Guiding Principles of the UDP. The UDP policies are introduced in Policies G1 and paragraph 2.3.4, G2, G3D and G18. The policies prescribe against the purpose to maintain and improve the environment, such that all relevant aspects of development are to be considered, and that all important local issues are to be considered and development must be compatible with the residential environment.

3.15 Outside the Conservation Area the proposals do not maintain or improve the environment, but instead do material harm to the street scene. Given that there are 85 poles on 33 sites the degree of harm varies from site to site. The evidence of Councillor Scott in Document LBB 17 describes and appraises each of the 33 locations. In certain cases the impact may be barely harmful; in other cases the impact may be materially harmful. This predicates a problem. Is the application severable? If some poles are acceptable then they could be given planning permission. But this sort of decision may be of no use to the appellants. It is however wrong in law not to consider separate parts of the proposal, each part of the proposal should be looked at separately. And because the issue is one of visual impact, it is a subjective matter that has to be assessed on site.

3.16 It is true that the officers recommended approval for application A, and that for application B no recommendation was made because the members opposition to the proposal was known. Members chose to disagree with their officers. And they are entitled to do so. With this case, where the issues are subjective, experienced members knowing their area well, and are perfectly capable of envisaging what may or may not be acceptable. The Council member giving evidence about the 33 sites outside the Conservation Area had visited the sites before the Committee decision and the inquiry.

3.17 The appellant tried to suggest that considerations other than those of planning had influenced the members' decisions. Councillor Mrs Scott agreed that non-planning issues were raised during the Committee, but that the Chairman strove to maintain that only relevant matters were debated. As for the time when votes were cast, no reasons were given and so it is quite impossible to assert that some members had regard to improper and irrelevant matters under the Act. For local authorities the maxim applies that there is a presumption, unless proved to the contrary, that a public body acts lawfully.

3.18 There is no planning policy on street furniture. Most street furniture is equipment for the public utilities and this is covered by the General Development Order, under which planning permission is not required. But there is a general growing concern about street clutter. Councillor Mrs Scott is very concerned about street clutter, and so this lends weight to

her views on the appeal proposals as it is something she has already thought deeply about. When the detailed evidence of Councillor Mrs Scott and Mr Fibbens are examined there are divergences which have to be resolved.

3.19 One aspect of Mr Fibbens' evidence that should be noted is his invariable silence about the effect of poles on private houses. Detriment to an individual property with no harm to the public could not generally be a legitimate cause of objection. But the effect on amenity of views from householders' windows in the context of the street scene is a matter for consideration. This aspect has not been weighed by Mr Fibbens and so his evidence should be treated with care. In addition his evidence did not consider the effect of the proposals on trees.

3.20 If Councillor Mrs Scott's evidence is accepted, the proposals would be detrimental to the street scene and would be in conflict with UDP policies. Given that this is an up-to-date plan the issues should be determined in accordance with the plan by virtue of Section 54A, unless material considerations indicate otherwise.

Hampstead Garden Suburb Conservation Area

3.21 The appellant accepts that this Suburb has an exceptional residential environment in both buildings and man-made landscape. It is a Conservation Area of Outstanding Architectural merit. The Hampstead Ridge which falls down to Wildwood Road was also an Area of Special Character defined by the Greater London Development Plan. Therefore within this area any development needs to be approached with the greatest of care; no harm should be done to impair the duty to preserve and enhance the Conservation Area. The fact that minor changes are not welcome in the area is shown by the Article 4 direction. Such minor changes can be affected by street furniture and this is referred to in the Draft PPG 15.

3.22 Wildwood Road is the most sensitive of the 38 locations in Councillor Davis' view. The impact of the poles and wire is again a matter to be assessed on site while taking account of the views expressed by Mr Fibbens and Councillor Davis. The Hampstead Lane location 14 lies within the Ridge Area of Special Character.

3.23 Within the Garden Suburb the minor changes brought about by the poles would be as detrimental and sometimes more so than some objects controlled by the Article 4 Direction. This would apply particularly in the semi-rural environment of the Hampstead Heath Extension. Councillor Davis with his long knowledge of his own local area is opposed to the poles in the Suburb. As a member of the Jewish community he has been an outspoken critic of the Eruv proposal, but he maintains that he has a lot of experience of separating out his personal views from relevant planning matters. His work as a JP helps him to do this.

3.24 If the Council's case is accepted, the proposals break UDP Policies G3, T2.1 and T3.1. Under Section 54A, a presumption is therefore raised against the proposals. Harm is done; and the Conservation Area is not preserved or enhanced.

Need

3.25 This issue raises the effect of a material considerations which could give weight to either accepting or rejecting the proposal.

3.26 Mr Fibbens sought to rely on policies in the UDP which relate to particular social and religious groups. He referred to Policies ERG 1.1, 1.2 and 1.3. But these policies are irrelevant. Using common sense it can be seen that the accompanying paragraphs 5.1.18, 5.2.15 and 5.4.14 make it clear that the policies are concerned with provision of new meeting places, premises for use, buildings and sites. The policies are not directed at poles and wire proposals and are not phrased to cover such development. There is therefore no policy support from the UDP for the Eruv proposals in terms of a need recognised in the UDP.

3.27 This is not to say that need is irrelevant or is not a material consideration. As has already been said the Council did not consider need for the reasons given in paragraph 3.2, and evidence was not provided on this matter for the inquiry. It is however possible to comment on the evidence heard at the inquiry without drawing any conclusions.

3.28 The Chief Rabbi said the concept of need was inherently difficult to assess. In many cases it is very difficult to define need. Even so it is proper to take account of private needs to overcome planning objections. A private need is good enough. It does not have to be a public need. A private school may have needs. A church tower may be a private need. There is no reason why a benefit for a pious religious group of Jews is not a need which should be assessed. The inquiry has been told that some pious Jews would benefit from the proposed Eruv in terms of being able to go to their synagogue on the Sabbath. But the need should be assessed in terms of its character, quality and quantity. The need should be given weight on a scale. The scale varies from "necessity to convenience". If the need is assessed as being at the lower end of convenience, this would not be something that would overcome a planning objection. Need must be assessed critically.

3.29 The appellants are trying to say that thousands would benefit from the Eruv. In Document EC22, the Summary indicates that the numbers who would benefit would be:

People in families which include small children	7,202
People over 75 years old	3,647
Others who will benefit	19,291
Total	30,140

But this gives no help as to how many in the congregations would fall into the 2 critical categories. The Council's exercise in Document LBB 13 gives some more direct figures as it looks at United Synagogue membership in the Eruv area. this gives a total membership of 14,890 which can be split into the 2 critical categories in the following way:

Under 5	963
Disabled	370
Total	1,333

But taking the Kalms report figure for the 10% of United Synagogue members who are observant gives a minimum figure of 133 who need the Eruv. The matter cannot really be taken any further than that - after that it is a matter of judgement. The Council does not have a conclusion on need. Probably there would be others associated with the smaller number. There are 15 synagogues in the Eruv area of which 4 are United Synagogue. It is not clear what position is taken by the different Jewish groups. There is no evidence for any further breakdown.

Material planning considerations

3.30 Questions have been raised as to whether much of the evidence at the inquiry has been relevant. The appellant's Counsel expressed trenchant views in opening as to what should be relevant. In fact the matter is more complex and difficult. The 1990 Act does not say what is or is not a material consideration. The classic case setting down the basic principle is *Stringer v MHLG* 1971 1 AllER 65 page 77:

"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."

It is clear that circumstances must be looked at.

3.31 Then the decision in *Great Portland Estates v Westminster City Council* 1984 3 AllER 750 appears to extend the scope of material considerations. Lord Scarman said:

"It would be inhuman pedantry to exclude from the control of our development 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."

From this case the human factor still needs to be related to the use and development of land.

3.32 Reliance on the human factor can only be in very exceptional circumstances. The human factor has to be connected to development of the land in question. There are no cases dealing with moral and religious matters in relation to development. It is only DCPN 11 and paragraph 2 of the Annex on Amusement Centres which says:

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

The planning system is blind. It should not decide between the Church of England, Roman Catholics and Hindus. It would be quite wrong for a decision to be based on a consideration of religion.

3.33 Another case which indicates that the human factor or personal circumstances of an objector is legitimate and relevant is *Fowler et al v Secretary of State for the Environment and North Wiltshire* DC 1993 JPL 365.

3.34 In this case there are a number of matters that are irrelevant. The first is whether more Jews might move into the Eruv area if the poles and wire were erected. This would infringe the Race Relations Act 1976. The second is the division of religious view about the theological justification for the Eruv development; the only relevance is to factual need. The third is the attitude of people to the existence of the Eruv as an area; the development is for 85 poles not for an Eruv. The 85 poles do not have any personality. The only conceivable relevance could be that if people, looking at poles, see the poles as creating disharmony. This would only be considered in the most exceptional circumstances. The Bromsgrove Funeral Parlour case was different as it involved old people looking at funerals; this would be likely to be upsetting.

Conclusion

3.35 The Council's case is based on visual harm. This is the right approach. The objectors took another approach, and that is up to them. Racial considerations should not be a material planning consideration. Need was not considered by the Council. This case has been a very difficult matter for the Council.

3.36 Planning law is blind. The real issue must be in terms of amenity and land use. If there is material harm then the proposals should be refused. But otherwise if there is no material harm then the appellants should be permitted to erect the poles and wire.

Conditions

3.37 There is a need for the second sentence of Condition 2. It would not be right to treat it as an informative. It refers to types of paint, while the first sentence refers to colour.

3.38 The appellant's proposed addition to condition 4 is not accepted. If works are required to trees then a substitute application would have to be made. There is only an assertion that trees would not be affected. The Council's position on trees should be protected. In Wildwood Road it would be more satisfactory to do it by application than through a condition. As for areas where there is a TPO in force, if planning permission is granted for the development then consent to lop is deemed to be granted. In the Conservation Area an application has to be made in order to lop trees. Condition 4 preserves the general legal position.

3.39 The objector's suggested condition restricting erection of any poles until all poles are permitted is reasonable.

THE CASES FOR INTERESTED PERSONS - OBJECTIONS

The material points are:

BARNET ERUV OBJECTORS GROUP

Introduction

4.1 This Group strongly opposes the creation of a private Jewish domain demarcated by poles and wires intended to enclose some 6.5 square miles of the London Borough of Barnet. The starting point is Section 70-79 of the Act. With an appeal, the application is to be treated as though it has been made to the Secretary of State in the first instance. It is not however correct to argue, as the Council do, that the Act is blind. This proposal is a novel or unique application in Barnet.

4.2 A significant aspect of the proposal is that one gap in the Eruv would be fatal to it as a whole. It is not an application for 38 sites. There is therefore the novel difficulty of deciding what to do if just one site is not acceptable. One site cannot be refused on its own as this is an application for a very specific function to create a integral private domain. If one site falls, then the whole application should be rejected. If this is wrong then a condition should be imposed that said no development at any site should proceed until all consents for all other sites are granted.

Visual impact

4.3 The Council's evidence is right about the harm to amenity of the 85 poles at the 38 locations. Local residents also objected on amenity grounds. Mr Garcka thought a pole in location 28 would look unsightly. Mrs Wand was concerned about a proposed pole at location 8 restricting access to her driveway. Mrs Whyte who lives close to location 28 is worried about highway safety if the wire breaks and thinks a ghetto would be created by the Eruv. It is clear that the proposed structures would be unsightly and detrimental to the landscape.

4.4 In the UDP paragraph 1.3.5 sets down an objective to preserve fine views. This is taken from RPG3, the Strategic Planning Guidance for London. Then in paragraph 2.3.6 one of the UDP aims is to protect and enhance the Borough's open views. Policy G3 D states an intention to preserve and enhance the special value of important local views. There is a plain planning objection to the proposals in relation to the visual amenity matters outlined above. In addition the proposals do not accord with the UDP policies cited by the Council.

Conservation area

4.5 The appellant's witness was wrong to say that conservation areas are determined by the houses and spaces between them and that street furniture is irrelevant. The character and appearance of the Hampstead Garden Suburb Conservation Area does include street furniture. The proposals would detract from this outstanding Conservation Area. Lord McGregor considers that the poles in Wildwood Road at location 13 would seriously damage the appearance of one of the most charming areas of the Heath. He says that

people walking through this area of woodland would have to proceed through an avenue of poles.

Implementation

4.6 The evidence on whether the poles could be put in the ground cannot be brushed aside. The applications are detailed and are not in outline. Precise location of each pole is vital.

4.7 Mr Lush's evidence is not irrelevant. His evidence is that poles cannot be placed next to walls. This must mean that some poles have to be moved. If the poles are moved say up to a metre onto the pavement, it would produce a wholly different impact. But if this were to happen how could the impact of the proposals be assessed? Is the planning permission for "migratory poles"?

4.8 An associated problem with poles that have to be moved is their possible effect on blind people. If the poles remain against a wall or at the back of pavement there is not a problem, but if the poles leave a gap to the wall this could create a trap for the stick used by the blind.

UDP Chapter 5 - Ethnic, Religious and Voluntary Groups

4.9 If the appellant's witness, Mr Fibbens, is right about UDP Policy ERG 1.1 this leads into Policy ERG 1.2. This means that the views of local ethnic and religious groups should be ascertained in the planning of new community facilities. It is however unlikely that he is right.

4.10 The Council does not want this proposal to be considered in the light of religious considerations. It wishes to keep planning law to visual intrusion and tree damage. But this is inconsistent with UDP Policy ERG 1.2, which indicates that the views of religious groups should be considered. It is clear that religion is a planning consideration.

4.11 Furthermore, one of the fundamental aims of the UDP is to improve the quality of life in the Borough. How can it be therefore be argued when a proposal damages social harmony that religious matters are irrelevant? At this inquiry there has been evidence from many groups in the community. How can their views not be a material consideration? In these appeals the social and religious considerations and their impact on the community must be considered. If the proposals are allowed, local people would have to stare at symbolic artifacts of just one religious group.

4.12 It follows that important religious matters are first, social harmony and religious balance. Second, there is the effect on many Jews who have holocaust memories and do not wish to be reminded of this by local poles and wire. Third, there are the religious views of religious leaders such as Lord Soper and the Rev Wainwright. Lord Soper considers that the Eruv is a piece of scaffolding which is not in the interests of Jews and Christians; for him it would be an unnecessary addition to troubles rather than an expansion of ideals. Rev Wainwright, Vicar of All Saints, Childs Hill, hoped he was pro-Jewish but was concerned that the Eruv was harming the Jewish community in Childs Hill. He had heard aggressive statements such as "I'm going to chop all the poles down" and "I think they all ought to go home". His parishioners would have to pass under the wires at location 17 to attend his church. He thought that the reason for the proposals was that

a group of religious fundamentalists wished to be able to apply a double standard.

4.13 In short there is unquestioned outrage that the interests of one small religious group should be advanced against the interests of the whole community with the inevitable destruction of social harmony. Lord Jacobovits said that in New York there had been 70 years of argument over the Eruv. This suggests that in Barnet there is the possibility of 70 years of trouble ahead.

Need

4.14 Taking the Council's approach to need, the benefits would only amount to personal convenience. Orthodox Jews have a super-added belief, which is a matter of personal choice and conscience only. There would be no objection to a ramp to a synagogue. But to argue that someone is a prisoner in their home because they cannot be wheeled to the synagogue on the Sabbath is a matter of personal choice.

4.15 The special pleading of Lord Jacobovits about depriving Orthodox Jews of their religious rights is a nonsense. The fundamental religious right is to worship as one pleases. These are the only needs addressed in planning policies. There is a major dispute in the inquiry as to whether disabled people can travel in wheelchairs on the Sabbath. There seems to be a contradiction between Lord Jacobovits' views on carrying on the Sabbath and the statement in the letter from the London Beth Din dated 6 December 1993 [Document EC 18]. Without exploring the theological dispute on this matter it is impossible to assess need. It is relevant to know theologically what the carrying laws are with the Eruv. If the Chief Rabbi is right, the primary beneficiaries of the Eruv would be the very young with mothers and the disabled. This means only some 133 would benefit. But there is no clear evidence on this. There is also no evidence as to why the need for the Eruv has suddenly grown stronger in London after 100 years or more. If there was no need in the past, there may be no need now for an Eruv.

4.16 If there is found to be a need, then this need is vastly outweighed by the damage caused to the community. This damage is reflected by the numbers of people who gave evidence at the inquiry against the Eruv proposals. The Bromsgrove DC case involving the funeral parlour [Document BEOG 5] deals with intangible factors. The Council's view on this case is not accepted. It is difficult to see the difference between poles and wire as markers of a ghetto and a funeral parlour.

4.17 The Race Relations Act 1976 [Document BEOG 6] deals with discrimination by planning authorities in section 19A, and the general statutory duty of local authorities in Section 71. It can be seen from Section 71 (b) that a local authority has a duty to promote social harmony in its area. This is another reason for the religious view to be a relevant planning consideration.

Precedent

4.18 It is known that other Eruvim are planned. There is one proposed in Borehamwood. The problem of precedent here is that Orthodox Jews may ask for another Eruv within the area of this Eruv. This would lead to very great difficulty with the Race Relations Act. If one Eruv is permitted, and

there is resistance to a similar proposal from another religious group then this breaches the Race Relations Act. It would not be possible to treat another ethnic group less favourably.

Prejudice

4.19 The appellant's Counsel, in opening, suggested that some people objecting to the proposal were prejudiced. It is not clear what he meant. This Group does not think it is governed by prejudice. But perhaps the assertion was more sinister; the assertion could have been directed at anti-semitism. But this was not put to witnesses.

4.20 This opening point was probably a forensic firework. It was however a deeply offensive remark as well as plain wrong. If this proposal is allowed it would lead to division and would destroy one of the fundamental aims of the area, that of social harmony.

DR & MRS J J SEGAL

4.21 The Eruv proposal is unique because it is the first of its kind and because of its large scale. The poles and wire are features. It would also be a feature of Barnet, and as such would be a part of the make-up of the character of Barnet. It follows as a matter of logic that the introduction of 85 new features would change the environment. A main factor in this change is the provision of a religious facility for a particular section of the community.

4.22 The appellant is wrong to argue that the poles and wire would not change the environment or anyone's life. With such a unique proposal the normal rules of judging change and demonstrable harm cannot be applied strictly. Discretion is required.

4.23 Dr and Mrs Segal have lived in Cricklewood Lane for over 30 years. Their local area is one where people of different ethnic and social cultures live together in harmony with mutual respect for one another's beliefs. The Eruv proposal has begun to change this harmony. People are asking questions about religious origin that were never asked before.

4.24 There would be demonstrable harm to visual amenity from the proposals. At location 4 the poles and wire one of which would be just outside their backgarden fence. This would intrude on their visual enjoyment and lead to more street clutter. The fact that the poles and wire may look like street furniture does not help. The poles and wire are symbols. The Segals cannot live happily with a religious minority who wish their views to be paramount. The pole by their back fence would constantly remind them that one group believes it is more important than another. The pole would be part of a gateway, which is something they cannot agree with or tolerate. The meaning that the poles and wire have cannot be divorced from the impact they have on visual amenity.

4.25 The introduction of 85 new features into the local environment would change its character. This would be contrary to UDP Policies G18 and T1.1. This new religious facility would create social disharmony and lead to possible imbalance in the area as more Orthodox Jews move into the area and others who do not like the proposal move out.

4.26 The appellant's assertion that all objections are based on prejudice is highly offensive. This objection is not on any anti-Jewish ground. Dr Segal is Jewish, but a non-believer. Mrs Segal is a humanist. The Segals believe in equality, mutual respect and are concerned with the social consequences of the proposal.

4.27 The need for the proposal must be questioned. Orthodox Jews are a minority of a minority. Is it right that their questionable needs should outweigh the social harmony of the wider community? And if there is found to be a need, does this need outweigh the other planning considerations? There is no real need, and if the proposal went ahead demonstrable harm would result.

4.28 In the Childs Hill area there is a high number of site specific objections. But this is not reflected in the numbers coming forward at the inquiry because the objectors are not so well educated and are not so confident as people in other areas of the proposed Eruv.

THIRTY FOUR BARNET RESIDENTS

Planning benefits

4.29 No planning benefits would arise from the scheme. Carrying of keys, pushing of prams and the disabling personal circumstances arising out of the personal choices of a tiny fraction of a section of the Jewish community cannot be considered to be of material importance.

Council objections

4.30 The Council's evidence provides a clear cut and compelling reason for refusal. This evidence is relied on. The conflict of the proposal with the Council's UDP policies - Policies G1, G2, G3A, G18, T1.1, T2.1 and T3.1 - provides a sufficient reason for refusal.

Pedestrian safety

4.31 This matter was overlooked by Council officers. The proposal breaches UDP Policy M6.1 and M6.2. This latter policy requires the Council "to improve the pedestrian environment and to minimize the risk of accidents to pedestrians". Mr A McKenzie spoke for the Barnet Visually Impaired; he expressed concern about the possibility of a blind person's walking stick getting caught between one of the Eruv poles and a wall. He also referred to a problem if the proposed wire came down and hit a blind person. The Fax dated 9 December 1993 [PK 12] from the Royal National Institute for the Blind states that all non-essential items should be avoided on the footway.

Amenity

4.32 The proposal would unacceptably affect the amenities of residents in properties fronting onto the poles and wires, and those people using the highways in these locations. The physical impact of the poles and wire would detract from the quality of the environment on each of the public highways involved. These amenities ought to be protected in the public interest. The public highway is a most sensitive area in the public environment.

4.33 Subjective reaction to the poles and wires is relevant. The Bromsgrove DC and Huxley Funeral Services case in Document BEOG 5 shows that the susceptibility of local residents and passers-by may constitute a proper planning consideration. Some frontagers spoke of their susceptibilities at an emotional level. For local residents areas such as Hampstead Heath and Golders Hill Park are secular "holy" ground. In these areas the proposals appal local sensitivities. For many local objectors the events associated with the holocaust are interwoven into their lives, either from individual experience or through relatives and friends. In a sense the objectors are survivors of the holocaust because so many survivors are living in this local area. This proposal, which involves the marking out of an area, appals local sensitivities.

4.34 All objectors have chosen to live in a community where cultures intermingle without friction; this conviction informs daily lives in the same way as a deeply held religious belief. The proposed structures would be symbols of division and conflict. The appellant's Counsel attempted to suggest that objectors were prejudiced. This accusation in itself has caused a great deal of harm.

Precedent

4.35 Allowing the proposal would establish a precedent for more local Eruvim in places like Manchester and Leeds, or anywhere where a significant proportion of young Jewish families could be gathered. This precedent would be undesirable. It would lead to significant legal problems, such as the questions of liability for injuries arising from injury suffered from the Eruv structures.

Public representations

4.36 The objections of local residents should be taken into account. This applies particularly to the representations received in relation to the impact on the character and appearance of the Conservation Area. Most of these representations are against the proposal.

Need

4.37 The appellant's need is only a material consideration if it amounts to a degree of need which involves personal hardship. The hardship in this case is one of personal choice and would not be within the ordinary meaning of the term.

4.38 Public land should be for public benefit. The benefit contended by the applicant would be for an unspecified section of the resident Jewish minority in the Borough. The proposal would allow acts on the Sabbath which are otherwise forbidden. The benefit would seem to be entirely disproportionate to the problems raised and harm done.

MR CECIL LUSH & MRS MELINA POPPER

Implementation

4.39 There would be serious problems if the proposed poles were planted in the positions shown on the application plans. If mechanical augers were

used to put the poles in, this would break the foundations of adjoining buildings. The consent of the owner of the building would be required. Most of the relevant frontagers object to the poles outside their property. There would be insufficient room to put in appropriate concrete foundations for each pole; an example of this is location 7 at Devonshire Place where it would be impossible to place the pole in the position shown on the plans. There could also be problems from water mains, gas mains, soil drains, electricity mains and telephone cables. No legal advice has been taken as to whether the practical problems arising from erecting poles next to walls are relevant matters for this inquiry.

Environment

4.40 The gate structures are symbolic. They are designed in accordance with religious precepts derived by ancient interpretation of religious law. As such they must always be unacceptable obtrusive to the street scene. The poles at location 12, North End Road/Hampstead Way, would be a visual distraction which could prove dangerous. This location is a high profile gateway close to 2 public houses. If the wire broke on a Friday afternoon at about 15.30 hours there could be traffic chaos as the Eruv Committee emergency squad tried to repair the wire.

Personal

4.41 The most upsetting aspect of the proposal is that it would be divisive. Driving under the gateways at locations 2 or 3 to enter the Barnet Ghetto would be like entering a concentration camp. The delineation of this boundary is against everything that democracy stands for in the UK.

4.42 Posts and wires seen from the living room or bedroom window would be a constant reminder of concentration camp posts and wires. Survivors of Auschwitz could react badly when confronted by poles and wire.

MR MICHAEL MAX

Planning objections

4.43 Planning arguments against the proposal 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, would be an eyesore and could attract fly posters. Many poles would not merge into the background; they would stand out. Some poles would dwarf adjoining structures and therefore have considerable visual impact. At location 15, Aymler Road, the 6.5 metre tall posts would be a very prominent addition to the street scene.

4.44 In the Hampstead Garden Suburb Conservation Area the poles at location 13 would impinge on the landscape of the Heath and be an unnecessary addition to the street furniture. In this location where town meets country it is possible that the telegraph pole by 1 Wildwood Rise could be removed in the future. This prospect for an improvement of the Conservation Area should be taken into account.

4.45 Each of the poles would be something entirely new to the street scene. Some of the poles could be a dangerous distraction to drivers.

4.46 Maintenance could be a problem. Poles could be vandalised. There is no assurance that adequate funds would be available to meet maintenance costs or the premiums for third party/public liability insurance.

Need

4.47 If benefits of the proposal are not in the equation, then the environmental matters are the most important objections. If benefits enter the equation then there is a disbenefit.

4.48 Long standing members of the United Synagogue have not been asked for their views on the Eruv. There should have been better consultation. The United Synagogue was constituted in 1870, so well over 100 years have passed without the need for an Eruv.

4.49 From information gained in correspondence [MGM 2] with United Synagogue Officers it seems that the Eruv proposal emanates from a small, well organised number of people living in NW11 and NW4. The general members of the 4 synagogues in the Eruv area were not canvassed for their views. It is unlikely that these members would support the Eruv or say that an Eruv was needed. The United Synagogue Honourary Officers and Council who support the proposal, tend to be the more observant members of the congregations and would not be a representative cross section of these congregations. The Eruv Committee would hope that there would be little opposition as it could easily be branded as anti-semitic or intolerant. This Committee would also rely on the emotional appeal connected with disadvantages facing the disabled and parents of young children.

4.50 The promotion of the Eruv is not responsible behaviour. An Eruv is not a major priority when other aspects of United Synagogue affairs are starved of funds [MGM 3]. Maintenance of the Eruv is likely to be a financial problem due to shortage of funds.

4.51 The numbers of Jewish people who would benefit from the proposal is smaller than the appellant suggests. Many members of the United Synagogue are not observant and do not attend their synagogue regularly. The alleged benefit is exaggerated; those who are disadvantaged on the Sabbath are disadvantaged by the degree of observance they choose to adopt. This observance is a matter of personal choice and should not require rights to be granted by secular government. And there is no reason why the law could not be questioned and then changed.

4.52 A hidden underlying objective for the Eruv is demographic. It is intended to encourage movement into the area defined by the Eruv of an increasing number of ultra Orthodox Jews. This would introduce a closed community. It would impose a ghetto atmosphere where integration of different cultures would no longer occur. The planning process should not be used to promote demographic movements.

Precedent

4.53 Allowing this proposal would encourage formation of further smaller Eruvim. If the proposal is accepted in Wildwood Road it would be acceptable anywhere. It would also encourage other minorities in the UK to abandon integration.

FINCHLEY SOCIETY

4.54 This Society has 850 members; about 50% live within the area defined by the Eruv. The Eruv proposals would be a serious threat to visual amenities at the gateway locations. The poles would detract from the appearance of each location in which they are placed. If permitted it would cause a precedent for the erection of other private street furniture. Proliferation of street furniture is unacceptable; streetscapes are ruined by posts and wires placed at random with no attempt at co-ordination. In each location it is wrong for the appellant to claim that the poles would be de minimis.

4.55 The wires might cause problems for birds. The wires might also cause dangers on roads to cyclists and motor cyclists if broken; a crime writer suggested that the 0.3 mm wire has sufficient strength to decapitate.

MR MONTAGUE MILLER

4.56 The Eruv would break down the varied harmonious community into selfish, embittered, fragmented portions with strong suspicion, bitterness and hatred. The proposal would implant on all people in the area pronouncements going back some 3-4,000 years. It would offend Christians, Muslims and Hindus and other religious people.

4.57 Why does the Eruv need poles and wires? Why is there a need for a physical boundary? The equator is known, but no-one has seen it. The Orthodox Jewish rules for the Sabbath are antique regulations. The claim that pushing a wheelchair for a disabled person or a pram for a young child on the Sabbath is wrong seems preposterous and fatuous today. Rabbis are divided about the correct interpretation of these rules. Some Rabbis would give permission to the disabled to use a wheelchair. The numbers who would benefit are small. The decision should follow the wishes of the greater number of people who are against the proposal rather than the lesser number of people who might benefit.

MISS E WHELAN

4.58 The Hampstead Garden Suburb has been tearing itself apart for some 2 years over this Eruv proposal. Some of the former neighbourliness of the Suburb has gone in this period. If the Eruv is allowed the Suburb could become a target for anti-semitic or racist attacks.

RT HON EDMOND DELL

4.59 The Council's arguments about the effect of the proposal on the environment are adopted.

4.60 Any proposal for more street furniture should be critically examined. If it serves the interests of the majority of local residents then it may be reluctantly accepted. But additional street furniture which serves the needs of a small minority should have to pass a very high level of proof. This proposal does not satisfy this level of proof. It would not pass unnoticed. Poles and wires cannot be made inconspicuous. It could become a

hazard to pedestrians. It could well set a precedent for other applications. This nature of the community in this part of Barnet would be changed if the proposal was allowed.

4.61 The poles and wires would not improve the character and quality of the Hampstead Garden Suburb Conservation Area. These structures would detract from the environment of the area.

4.62 On the question of need, if Jewish people are suffering without an Eruv then that is something new in the Jewish community in the UK. If Jewish people now believe that pushing prams and wheelchairs is inconsistent with their faith, then that is their choice. It is wrong for Lord Jacobovits to suggest that Jews in the past were less conscientiously observant; it is likely that they had a greater sense of proportion. Jewish people have lived in the UK for some centuries and until now an Eruv was not thought to be necessary.

4.63 Many Jewish people drive cars, carry handkerchiefs and go shopping on the sabbath. Most Jewish people would carry on the Sabbath if it was required. The proposal is supported by extremists and would cause friction.

4.64 The need for this proposal is not strong enough to justify the erection of the poles and wires. People who choose a particular way of life should not expect to gain relief from their self-imposed obligations by requiring that poles and wires be erected.

MR DOUGLAS THOMAS

4.65 The poles would be unsightly in the Conservation Area.

4.66 Hampstead Garden Suburb is a mixed religious community. There is little anti-semitism or violence. Race relations are good. Nothing should be done to change the balance and break down community relations.

4.67 The Eruv would be likely to attract more Jews to the area. The harmony in the Suburb would be harmed if the proportion of Jews increased. Christians and other religious people might move out leaving the area as a Jewish enclave. Hopefully this is not an anti-semitic view. It is a matter of the right proportions and balance in the community.

MR B SIMPSON

4.68 The root of the arguments about the proposal concern territory. Marking out territory by poles and wire inevitably causes aggression.

MRS L S GILLESPIE

4.69 With this objection no accusation of anti-semitism can be made as most of my relatives were murdered in the holocaust. The evidence of the Barnet Eruv Objectors Group is adopted.

4.70 The proposed poles and wires would only serve a purpose in terms of religious need for just 15 hours a week. During the inquiry it has not been possible to find out the actual numbers who would benefit from the Eruv.

THE CASES FOR INTERESTED PERSONS - SUPPORT

MR JOSEPH DOUEK

4.71 The Eruv would give this Orthodox Jewish disabled person freedom to practice his religion to the full. It would allow him to be pushed to the synagogue by his family to take part in all Sabbath services. It would alleviate the problem of his children being separated from him on the Sabbath in the synagogue. It would enable him to visit friends and relatives in his wheelchair. Disabled peoples' rights far outweigh any arguments put forward against the Eruv. Refusing the Eruv infringes human rights and restricts freedom of movement of the disabled.

MR JERRY SHATZKES

4.72 In New York the local Eruv enhanced the quality of life of young people as well as the elderly. The Eruv was constructed over 22 years ago. According to the leading Rabbi in the area there has been no vandalism, social unrest or anti-semitism due to the Eruv. New York has over 30 Eruvim.

4.73 The independent Orthodox community of Ner Israel in Hendon is 100% in favour of the Eruv. As a young community the Eruv would dramatically enhance the quality of congregant's lives.

MR AND MRS NEVILLE SILVER

4.74 The level of animosity and bigotry stirred up by the Eruv proposal is a matter of great concern. For some 30 years people from a variety of backgrounds have integrated in a harmonious way within the Suburb.

4.75 The Eruv would bring advantages to young mothers, the frail and the infirm members of the Orthodox Jewish community. For this reason the proposal is fully supported. The proposals would not have any detrimental effect on amenities of the Suburb or the townscape of the Borough.

4.76 Objections to the proposal by the Council have been strongly influenced by anti-racial and anti-religious feelings. The so-called visual intrusion objection is no more than a figment of member's imaginations. A few poles at Wildwood Road joined by virtually invisible wire would not be any more intrusive than existing telephone poles.

4.77 Opposition seems to be based on 3 matters. First, there is inherent opposition to Jews being attracted to the area. Second, there is opposition from non-orthodox Jews who do not respect the laws of orthodox Judaism and prefer that their fellow Jews maintain a low profile. Third, there is the fear that the Eruv would create some form of boundary for people for whom it has no significance. All these objections have nothing to do with proper planning considerations.

MRS G SIGEL

4.78 In Memphis USA an Eruv was put up. It enhanced Jewish family life. It meant that young children could come to the synagogue.

4.79 Without an Eruv there are problems. For families with small children one of the parents could not participate in prayer at the synagogue. With one parent families there are greater difficulties. In addition Orthodox Jews cannot carry objects such as a raincoat, sunglasses, housekeys or a contact lens case on the Sabbath.

WRITTEN REPRESENTATIONS - OBJECTION

4.80 There were over 185 written representations objecting to the proposal [Document 4]. Many expressed very strong opposition to the poles and wire and to the Eruv. One common theme was that the proposal is aimed at an artificial need, is unnecessary and would be unacceptably divisive. Another common objection questioned the right of a minority group to impose its wishes on the wider community. In many letters the objections were similar in both content and strength of feeling to those presented at the inquiry. Substantial volumes of written objections received by the Council are contained in Documents LBB/1, LBB3 and LBB5.

WRITTEN REPRESENTATIONS - SUPPORT

4.81 There were over 290 written representations supporting the proposal [Document 3]. Many expressed strong support for the proposal. A significant measure of support came from observant or Orthodox Jews who said they or their families would personally benefit. There is also support from non-Jewish residents. Substantial volumes of written support received by the Council are in Documents LBB/2, LBB/3 and LBB/5.

CONCLUSIONS

The figures in [] refer to the paragraphs in preceding sections of the report.

Main issues

5.1 I find that there are 4 main issues in these 2 appeals. The first is the effect of the proposed poles and wires on the character and appearance of the street scene in various parts of Barnet. The second is the effect of the proposal on the appearance and character of particular parts of Hampstead Garden Suburb Conservation Area. The third issue is whether, if there are any planning objections to the proposal, the need for the proposal outweighs these objections. The fourth issue is whether there are any other material considerations which are sufficient to amount to a compelling planning objection.

Applications A and B and the Eruv

5.2 Before dealing with each issue I consider it is important to try to make a helpful distinction between the appeal applications and the Eruv.

5.3 In the inquiry I found that many objectors and supporters directed most of their comments and arguments at the Eruv as a religious concept. They found it impossible to separate the proposed posts and wires as a form of development from the Rabbinical institution of an Eruv. This led to inevitable arguments about the need for an Eruv in Barnet. It also led to most participants in the inquiry referring to both the poles and wire and the Eruv in a way that inferred that these 2 phenomena were synonymous. [2.1, 2.18, 3.2, 3.34]

5.4 It seems to me that the appeal applications comprise pieces of street furniture in the form of small groups of cylindrical poles joined at the top by very thin wire. The poles resemble lamp posts without the lamp fittings. The appeal applications propose the erection of 85 or 80 poles in 38 locations. By contrast I believe the Eruv is a legal device which helps to define an area within which Orthodox Jewish people feel able to carry or move certain objects on the Sabbath. The Eruv itself does not require planning permission as most of it is not development in terms of the Act. Most of the Eruv boundary follows existing physical features such as railway lines, walls and fences. From my site inspections I saw that the appeal applications covered a small part of the Eruv boundary: some 0.66 miles out of the total 11 mile Eruv perimeter. [2.1-2.4, 2.5-2.8]

5.5 The first and second issues primarily concern the physical aspects of the appeal proposals. The third and fourth issues do involve some consideration of the nature of the Eruv and the need for such a device in Barnet.

Development plan

5.6 For the purposes of sections 70(2) and 54A of the Act, the development plan is the Barnet Unitary Development Plan. I did not find the development plan to be especially helpful as none of the policies identified by the main parties were directly relevant to the very unusual

nature of the appeal proposals. The Main Aim (1) in paragraph 2.3.4 and the General Policies G1, G2, G3, G18, T1.1, T2.1 and T3.1 are all reasonable general land use policies, but not one of them addresses the specific prospect of the erection of poles and wire or street furniture. There is no development plan policy directed at street furniture.
[2.14, 2.22, 3.14, 3.20, 3.26, 4.4, 4.30]

5.7 As for the arguments about the relevance of the UDP's policies for Ethnic, Religious and Voluntary Groups, I do not agree with the appellant's interpretation of this aspect. I found that these Chapter 5 policies were directed at the provision of meeting places. Policies ERG1.1, ERG 1.2 and 1.3 seem to me to be entirely concerned with meeting places. I do not therefore consider that the provision of either the poles and wire or the institution of an Eruv is covered by these policies. The most that could be inferred from this section of the UDP is that the needs of ethnic, religious and voluntary groups should be recognised.
[2.14, 3.26, 4.9-4.10]

Impact on the street scene

5.8 I think it would be right for me to deal separately with each location, rather than try to make generalised statements about groups of locations. As each location is different, the impact of the poles would also be different. My comments on the effect of the proposed poles and wires are made in the light of the general policies in the UDP referred to in paragraph 5.6, the appraisals submitted in the inquiry and my site inspections. My comments on each location accept that the poles would be seen from the pavement or adjoining path or highway and in some cases from nearby properties. My comments also incorporate my opinion that the 0.3 mm diameter wire is very difficult to see. I could just see the wire by carefully focussing on it against a clear sky. I could not see the wire when it was set against a backcloth of trees. I found that there was insufficient evidence to demonstrate that the poles would harm the amenity of residents living close to any of the 33 locations. I consider that the fact that a pole or poles might be seen from a window or garden does not amount to a compelling planning objection. In saying this I note that this was not a reason for refusal, and was not closely argued by the Council or any of the objectors. For these reasons, I have not addressed this residential amenity matter any further.
[2.23-2.24, 2.27, 3.15, 3.20, 4.3-4.4, 4.32, 4.43, 4.54]

Location 1 Lichfield Road

5.9 The nearby junction of Lichfield Road with Cricklewood Road already contains a collection of street furniture in the form of traffic lights and lamp posts. I do not consider that the 2 poles and wire adjacent to the flank walls of the Cricklewood Lane properties would harm this street scene.

Location 2 Farm Avenue

5.10 The pole next to the privet hedge of 2 Farm Avenue is unlikely to be welcomed by the occupants of that property. However I do not consider that this pole, or the pole by the Avenue Court garages, would harm this street scene in a way that would justify dismissal or refusal of this part of the

appeal proposals. The proposed poles would be no more obtrusive than the existing lamp posts in Farm Avenue.

Location 3 Hendon Way

5.11 There are a collection of lamp posts, highway signs and traffic lights in this location. Two of the 3 poles in this location would be close to the flank walls of 276 and 284 Cricklewood Lane; the remaining pole would be within the central reservation. I do not consider that the proposed poles would be noticeable or visually harmful close to this busy 6 lane carriageway.

Location 4 Lyndale Avenue

5.12 I saw that one pole was within about 3 metres of Dr Segal's former single storey surgery at 308 Cricklewood Lane and could be seen from his rear garden. I was told that this pole would be particularly unwelcome to the occupiers of this property. I noted that the other pole seemed to be located a small distance away from the side wall of Kimber House. I was not convinced that there would be a danger to pedestrian safety at this location; I would expect the appellant together with the Council to ensure that blind people were not endangered by this eastern pole. Although the 2 poles in these locations would be conspicuous in this street scene, I did not find that they would cause demonstrable harm to its appearance and character such that dismissal or refusal of this part of the appeal proposals would be justified.

[4.24, 4.31]

Location 5A Sunnyside

5.13 One pole would be adjacent to a concrete staircase to the rear of the 4 storey Sunnyside House with its ground floor car showroom; the white concrete staircase would be a much larger and more dominant feature in the street scene. The second pole would be located to the rear of the 3 storey 358 Cricklewood Lane. At the back of pavement I consider the 2 poles would be less intrusive than nearby lamp posts and telegraph poles. I do not consider that the poles would harm this street scene.

Location 5B Ridge Road

5.14 The pole alongside the 3 storey 336 Cricklewood Lane would be close to a large black drainpipe. The pole next to a fence around a small car park would be close to a lamp post. I do not think the location chosen near to the lamp post would be ideal as it would draw attention to street furniture. Despite this I consider that the poles would not adversely harm this street scene.

Location 6 Finchley Road

5.15 This location is close to the junction of Finchley Road with Cricklewood Lane. There are a typical collection of traffic lights, lamp posts and highway signs in the vicinity. The pole adjacent to 707 Finchley Road seems to be located under a fixed canopy attached to that property. In this location there would therefore inevitably be problems with implementation. The eastern pole would be located between 446 and 448 Finchley Road. As I consider that 2 poles in this location would not harm

this street scene, I think that the best way to resolve this problem is by way of a condition.

Location 7 Devonshire Place

5.16 There is a hotchpotch of commercial development in Devonshire Place. The introduction of the 2 poles would not adversely harm this location.

Location 8C Hermitage Lane

5.17 I saw that the southern pole would adjoin the iron railings of Hermitage Court. The northern pole would be next to the boundary between 41 and 43 Hermitage Lane. I saw that this northern pole probably would affect some branches in the tree in No 43; I would not expect such works to harm the street scene. The existing street furniture in this location is confined to lamp posts. I found that the proposed poles would be less prominent than these lamp posts and would be masked to some extent by the nearby trees. I therefore do not consider that the poles here would harm the street scene in a way that would justify dismissal or refusal of this part of the appeal proposals.

Location 9 West Heath Road

5.18 Both poles would adjoin fences of properties in West Heath Road. The northern pole would be masked to some extent by the mature trees in the garden of 34 West Heath Road. It seems likely that the northern pole would require the lopping of a small lower branch, but I do not consider that this would have any material effect on the area. I do not consider that the poles would adversely harm this street scene.

Location 12 North End Road/Way

5.19 I see from the plan submitted by the Council that the line [ie wire] between the 2 poles seems to pass straight through the existing lamp post. This suggests to me that there would be practical problems associated with the erection of this pole and the wire across North End Road. For this reason I consider this precise location to be unsatisfactory. I note the written views of the Corporation of London on this location.

5.20 In saying this I consider that a pole in a nearby location on the west side of North End Road, together with the pole by the property "Elmwood", would not adversely harm this street scene. By contrast the "Hare and Hounds" public house sign is a far more intrusive piece of nearby street furniture. The necessary small movement of the pole to the south east away from the lamp post to allow its erection could best be covered by condition.

Location 18A East End Road

5.21 I agree with the Council that the poles would be in an elevated position. They would be just on the side of the Northern line bridge and be readily visible because of the absence of any surrounding structures. Despite this visibility I do not consider that the poles would adversely harm this East End Road street scene. Existing nearby lamp posts and telegraph wires do not detract seriously from the street scene.

Location 18B Prospect Place

5.22 These poles would be close to the Northern line railway bridge. I do not consider that the two 3.5 metre poles would either be incongruous or harm the character and appearance of this cul-de-sac.

Location 19 Church Lane

5.23 The setting of the listed building, Holy Trinity Church, would not be affected by the eastern pole. The pole would not intrude into this setting. Any necessary lopping of branches here would not harm the appearance of the area. The western pole would not be welcomed by residents living in 84 Church Lane; there is already a telegraph pole on the pavement in front of the boundary of this property with 82 Church Lane. The two poles would add to the collection of street furniture in this location, but would not harm the appearance and character of the street scene in a way that would justify dismissal or refusal of this part of the appeal.

Location 20 North Circular Road

5.24 These poles were located close to the side of a bridge carrying the North Circular Road over the Northern line. The poles would be less prominent than existing lamp posts which do not have any noticeable impact on the character and appearance of the area. I do not find that the two poles would adversely harm the A406 street scene.

Location 21 Squires Lane

5.25 I accept the Council's point that this location is where the road narrows at the bridge over the Northern line. I do not consider that placing the western pole close to a lamp post is ideal. However I did not find that the poles would adversely harm this street scene near the bridge.

Location 22 Regents Park Road

5.26 The placing of both poles close to existing lamp posts would draw attention to street furniture. I therefore do not consider that this proposed arrangement would be ideal. But the arrangement of poles would not be so harmful as to justify refusal or dismissal of the proposal in this commercial location.

Location 23 Devonshire Road

5.27 The Council is right to say that these two 6.5 metre poles could be seen from various windows of residential properties on the north western side of the roundabout and in Devonshire Road. But this in itself is insufficient to justify refusal or dismissal of this part of the proposal. The impact of the poles on the street scene would also not be serious enough to justify refusal or dismissal of this part of the appeal proposal. I found that the existing lamp posts on the roundabout did not spoil the street scene and yet they are more conspicuous than the 2 poles would be.

Location 24A Great North Way (North)

5.28 The 3.5 metre pole would be under the footbridge and would make little impact on the Great North Way street scene. The 6.5 metre pole would be at the corner of the Copthall playing field boundary and the Northway Tyres depot site and would be clearly visible. But this pole would be less prominent than the lamp posts along the Great North Way; the lamp posts, which the Council says are over 10 metres high, seem to me to be an acceptable form of street furniture. It would be significantly less intrusive than the existing Northern Tyres pole advertisement. I consider that the poles and wire would not adversely harm this street scene.

Location 24B Great North Way (South)

5.29 Again I consider that the 3.5 metre pole under the footbridge would have little impact on the street scene. The 6.5 metre high pole would certainly be visible from some front windows of "White Lodge", but this does not amount to a compelling planning objection. As with location 24A, this pole would be less prominent than nearby lamp posts, which seem to me to be acceptable in this Great North Way street scene. I therefore consider that the poles and wire would not adversely harm this street scene.

Location 25 Watford Way

5.30 The three 6.5 metre poles near to an entrance to Sunny Hill Park would be prominent because of their size and position away from buildings. They would be clearly seen from the footpaths on either side of Watford Way. However they would be less prominent than the lamp posts along Watford Way. The pole in the central reservation would be somewhat incongruous as there are no other items of street furniture in this part of the highway. But neither this incongruity nor the prominence of all 3 poles amounts to a compelling reason to dismiss or refuse this part of the proposal.

Location 26 Colindeep Lane

5.31 These two poles are close to the bridge over the M1. Both poles would also be close to existing lamp posts; this would draw attention to the poles and lamp posts. The northern pole would be prominent as it would not be screened in any way. I do not however consider that the poles would be so incongruous or intrusive as to justify dismissal or refusal of this part of the proposal.

Location 27 Station Road

5.32 The northern pole would be on the bridge over the M1. The southern pole would be just to the side of the bridge. Both poles would be prominent additions to the street scene because of its open nature in this location. But I do not consider that the poles would adversely harm the appearance and character of this street scene.

Location 28 Park Road

5.33 The northern pole would be prominent as it would be away from any buildings or trees. The southern poles would be screened to some extent by existing trees, I am not convinced that the southern poles would unduly

affect the trees. I do not consider that the poles would adversely harm this street scene.

Locations 29A and B Templehof Avenue

5.34 These four poles would be on bridges over the River Brent which are part of a roundabout access to Brent Cross Shopping Centre. There are many lamp posts and highway signs in this area. I do not consider that the four poles would adversely harm this street scene.

Location 30 Templehof Avenue/Tilling Road

5.35 I do not consider that the 2 poles would be noticeable in this location close to the Holiday Inn. There are lamp posts, telegraph poles and advertising hoardings in the vicinity. I consider that the poles would not adversely harm this street scene.

Location 32 Childs Hill Walk

5.36 I saw that these poles would be either side of a footpath and the entrance to All Saints Primary School. I note the anxiety expressed by the headteacher of the school about the religious impact of the poles and wire. I do not consider that the poles would adversely harm the appearance and character of the street scene.

Location 33 Stanley Road

5.37 I saw that there is a clump of hawthorn trees close to the proposed northern pole. It seems likely that some of the small branches on the tree nearest to the bridge would have to be lopped in order to erect the pole. And it might be necessary to lop some small branches from the adjoining tree in order to hang the wire. I do not consider that these works to the trees would have a serious impact on the local environment. The Council are right to say that there is little street furniture in the vicinity. The two 3.5 metre poles would therefore introduce new street furniture into the end of this cul-de-sac. But I do not find that the poles would be either incongruous or intrusive in this location. I consider that the two poles would have no adverse impact on this area.

Location 34 Ashley Lane

5.38 These two 3.5 metre wooden poles close to Woodtree Close would be difficult to see in summer because of existing planting alongside the bridleway. In winter months the poles would not be prominent or intrusive. I consider the poles would have minimal impact on this area.

Location 35 Great North Way

5.39 The two 3.5 metre poles would have little visual impact on the combined footpath to Mill Hill and entrance to the Archfield allotments or on the residential slip road. I do not consider that the poles would adversely harm the appearance and character of this area.

Location 36 Great North Way Copthall

5.40 These two 3.5 metre poles at the entrance to the Copthall Centre and playing fields would be likely to have less visual impact than the nearby telegraph pole and lamp post. I do not consider that the poles would adversely affect the appearance and character of the area.

Location 37 Brent Terrace

5.41 These poles are within a small industrial estate. I agree with the Council that the visual impact of the poles would be negligible.

Conclusions: impact on street scene

5.42 In reaching my conclusions on the 33 locations outside the Conservation Area, I have taken account of the Council's comments on its growing concern about street furniture. I see that there is no planning policy on street furniture. And I note that most street furniture is equipment for the public utilities, and that most of it does not require planning permission.

[2.23, 3.18]

5.43 On my site inspections I found it helpful to compare the proposed poles with nearby lamp posts. I did this because I saw that the poles would closely resemble many lamp posts in shape and diameter and colour. But unlike all lamp posts, each pole would be simply a vertical element without any additional fittings. And most poles would be shorter than nearby lamp posts. In the 33 locations I inspected, I found that the nearby lamp posts were acceptable structures in the street scene. I also found that while the proposed poles would add to existing street furniture in each location, there was no location where the overall impact would seriously harm the character and appearance of the particular location. There was insufficient evidence presented to convince me that the proposed poles would have any adverse visual impact on the environment.

[2.23-2.24, 3.18, 4.3-4.4, 4.21, 4.24, 4.40, 4.60, 4.76]

5.44 As for the arguments about the impact of the poles on trees, I found the quality of the evidence to be somewhat unsatisfactory. On the one hand the appellant stated that no lopping of any tree would be necessary. On the other hand the Council provided schedules and plans showing where trees might be affected by the erection of the poles and wires. I therefore had to carefully inspect each site to try to assess the effect of the proposal on trees. I did not find that there were any locations where alterations to trees would be likely to harm the environment. But as there was considerable uncertainty in the inquiry about this poorly investigated matter, I can see merit in the condition suggested by the Council.

[2.25, 3.10, 3.19, 3.38]

5.45 In two locations I found that there seemed to be implementation problems. In Location 6, Finchley Road, the western pole appears to be sited under a fixed canopy. This strongly suggests that the pole would have to be relocated, if one is to be erected on this side of the highway. Similarly in Location 12, North End Road, the western pole appears to be directly behind a lamp post in relation to the eastern pole. This suggests that this pole would have to be relocated. In these circumstances it would

seem reasonable to deal with these minor amendments to siting by means of a condition.

5.46 In my consideration of all the objections I heard, and read in the written representations, I have taken account of every factor mentioned including the concerns about graffiti. I find that none of these matters is sufficient to cause me change my conclusions on this first issue.

Impact on Hampstead Garden Suburb Conservation Area

5.47 There is no dispute about the quality or importance of this Conservation Area. I agree with the Council and objectors that development in this area must be approached with the greatest of care. I noted the Council's comments on the Article 4 Direction and the Area of Special Character. It was also clear that the most sensitive location in this area was Wildwood Road. Many local objectors and the Council expressed particular concern about the impact of the poles on the environment of the Hampstead Heath Extension at Location 13. Despite the concentration of objection on this single location I consider that it is right for me to deal separately with each of the 5 Conservation Area locations.
[2.26, 3.21-3.23, 4.5, 4.61, 4.65]

5.48 Before I make this assessment I think it is prudent to set down the proper way of applying planning control in conservation areas. With such an unusual proposal sited in such an important conservation area it is essential to approach Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in the right way. This requires that special attention shall be paid in the exercise of planning functions, to the desirability of preserving or enhancing the character or appearance of a conservation area. The Courts recently confirmed this requirement in *South Lakeland DC v Secretary of State for the Environment*, [1992]2 WLR 204. And it has been held by the Courts that there is no requirement in the legislation that conservation areas should be protected from all development which does not "positively" preserve or enhance. It would seem that preservation can be achieved either by development which makes a positive contribution to an area's character or appearance, or by development which leaves the character and appearance unharmed.
[2.21]

Location 13 Wildwood Road

5.49 With application A there would be 7 poles along the eastern edge of Wildwood Road. With application B there would be 2 poles with the wire proposed to be strung on intervening lamp posts. I find that it would be useful to point here to a significant difference between the two applications. With application B, I believe there would be insurmountable problems over implementation at location 13. The Council have refused to permit the use of its lamp posts for hanging the wire; this seems to me to effectively prevent the proposals at location 13 from being implemented. I therefore consider that for application B there is no realistic proposal on which to make a decision.
[1.1, 1.4, 2.1-2.3, 3.11, 3.21-3.23]

5.50 When I walked around this area I found that the 7 poles would be clearly visible from nearby locations on the pavements on either side of Wildwood Road, but would not be unduly prominent in views from Hampstead

Ridge to the south, or from locations to the north in the Hampstead Heath Extension. The wire would be barely visible when seen against a clear sky and almost impossible to see when viewed against the backcloth of the trees and ridge to the south. I do not agree with the Council's assessment that the wire would highlight a visual separation of Heath from the Heath Extension in terms of continuous landscape.

5.50 In order to examine the impact of the poles on this environmentally sensitive area I found it instructive to see the impact of existing street furniture. I found that the poles would be less prominent than existing lamp posts and the telegraph pole in Wildwood Road. This is because the poles would be at the back of the pavement closer to the trees and shrubs, and would not have any clearly visible additional fittings at the top. I found that I did not agree with the Council's assessment that the existing street furniture in Wildwood Road of about 9 lamp posts and one telegraph pole in the vicinity of location 13 represented incongruous features in a largely natural landscape. I found that the existing street furniture along this short stretch of road across the Heath was visually acceptable and had virtually no impact on the appearance and character of this street scene. [2.26, 3.21-3.22, 4.5, 4.44]

5.51 I found that the decision as to whether the poles would be acceptable in this sensitive location was finely balanced. I suspect that some branches of trees in line with the poles would need to be lopped in order to hang the wire; but I do not consider these works would have a material effect on the environment in Wildwood Road. There can be no doubt that the erection of the 7 poles would bring about minor visual changes along Wildwood Road. I also consider that the poles would not positively preserve or enhance this area. But from the evidence and my site inspections I was not convinced that these minor changes would have a material effect on the Conservation area. I therefore concluded that the addition of the proposed 7 poles would leave the character and appearance of this part of the Conservation Area unharmed. [2.26, 3.22-3.24, 4.5, 4.44]

Location 14 Hampstead Lane

5.52 This part of Hampstead Lane is lined with trees. I do not agree with the Council's assessment that the two poles in this location would be visually intrusive. I do accept however the Council's claim that the poles would be clearly visible. But they would be less prominent than nearby lamp posts which seem to me to fit in reasonably well into this tree lined street scene. Similarly I would expect the poles to fit into this street scene without causing any material impact. I therefore consider that the addition of the two poles would leave the character and appearance of the Conservation Area unharmed. [3.22]

Location 15 Aylmer Road

5.53 The three poles here would be conspicuous as they would stand in a fairly open setting. This was another location where the arguments for and against the poles are finely balanced. What just tipped the scales was my observation that the cluster of about twelve 12 metre high lamp posts in the vicinity of this junction leaves the Conservation Area unharmed. In this context I found the addition of three 6.5 metre high poles would not

have a material effect on this street scene. I therefore consider that the erection of the three poles would leave the character and appearance of the Conservation Area unharmed.

Location 16 Bancroft Avenue

5.54 In this location the two poles would introduce new structures into a road where the only street furniture is lamp posts. From the evidence and my site inspections I am not convinced that the poles would have any material effect on this street scene. The fact that the poles would be visible and unusual are not sufficient reasons to justify the assertion that they would harm the Conservation Area. I therefore consider that the poles would leave the character and appearance of the Conservation Area unharmed.

Location 17 Cherry Tree Hill

5.55 In the inquiry there was some controversy over the effect of the eastern pole on the sycamore tree. I suspect there would be a need to lop some branches in order to hang the wire across the road. I noted that branches had already been lopped from this tree where it spread over the adjoining service area. But I do not think that any other works on this tree would have a material effect on the street scene. I further do not consider that the poles would be visually intrusive. In my opinion erection of the poles would leave the Conservation Area unharmed.

Conclusions: Conservation Area

5.56 In these 5 locations I found that the erection of the poles would leave the Conservation Area unharmed. While I found the arguments on impact to be more finely balanced in the Conservation Area, I found the evidence that was advanced against the erection of the poles to be insufficient to justify dismissal or refusal of the appeal proposals.

Need

5.57 I found that the planning objections on grounds of visual impact on the street scene and the effect on the Hampstead Garden Suburb Conservation Area were insufficient to justify rejection of the appeal proposals. I therefore logically do not have to go on to deal with the question of need. However in case the Secretary of State does not agree with my conclusions on these two main issues I have decided to consider the evidence that was presented on need.

5.58 The Council did not have a conclusion on need as it was not part of the Council's case. However the Council did offer useful comments on the evidence given by other parties without drawing conclusions.
[2.13, 2.28-2.34, 3.2, 3.25-3.29, 3.35]

5.59 I found that the proposals would benefit certain members of the Orthodox Jewish community. The erection of the poles and wire would lead to the creation of an Eruv; this would allow Orthodox Jews to "carry" on the Sabbath. Those most directly affected would be the disabled, the elderly and mothers of small children. But there would also be others who would gain indirectly from this legal device. Precise numbers of those expected

to benefit are very difficult to calculate, and insufficient evidence was submitted for me to reach a firm conclusion on this. I can only go so far as to say that I consider that the Council's minimum figure of 133 is a gross underestimate as it takes no account of the wider families or friends of the under 5s and disabled.

[2.7-2.10, 2.28-2.34, 3.25-3.29, 4.14-4.17, 4.47-4.52, 4.57, 4.62-4.63, 4.71-4.73, 4.75, 4.78-4.79]

5.60 I have also considered the objectors' assertion that the need of Orthodox Jews is not really a need because it is a matter of personal choice. This seems to me to be an unduly narrow approach to the needs of minority groups. If this assertion was accepted it would have to apply to all facilities for all religious or ethnic groups. I consider that the need of some Orthodox Jews to sidestep Rabbinical laws, so that they can for instance go to their synagogue on the Sabbath, represents a legitimate need. To decry or challenge the Rabbinical laws, as some objectors attempted to do, does not in my opinion weaken the case in support of the Eruv.

[2.8, 2.17, 2.30, 4.14-4.15, 4.27, 4.29, 4.37-4.38, 4.47-4.52, 4.57, 4.64]

Other material considerations

5.61 There can be no doubt that this proposal has generated very strong feelings in the local community. There are significant numbers of local residents who are utterly opposed to the proposals. And there are significant numbers of local people who express clear support for the proposals. These unusually strong differences of opinion were evident in the inquiry. The occasional angry and loud interruptions and the observable anxiety and fear expressed by various witnesses gave me some indication of the depth of feeling of those attending the inquiry.

[3.1-3.2]

5.62 One of the main concerns of objectors at the inquiry and in the written representations was the effect of the proposals on social harmony. I heard many objectors voice their genuine fears that the creation of an Eruv in Barnet would increase racial tension, and that poles would be symbols of religious division and conflict. I found the further assertions by objectors that the Eruv would lead to the creation of a ghetto in Barnet to be unfounded and in danger of infringing the Race Relations Act 1976.

[2.17-2.18, 2.31-2.34, 4.9-4.13, 4.16-4.17, 4.23-4.25, 4.33-4.34, 4.41-4.42, 4.52, 4.56, 4.67, 4.77]

5.63 The relevance of the arguments about the effect of the proposals on social harmony is not a straightforward matter. There is little direct guidance from legislation, the development plan or the Courts. The Stringer and Great Portland Estates case set down basic principles as to what could be a material consideration: from these cases I find that the human factor is seen to be a material consideration in exceptional or special circumstances. It follows that the human factor must be related to land-use planning matters. Furthermore social harmony is clearly a human factor. And social harmony is identified as contributing to the quality of life in the UDP's first Main Aim. But the objectors' assertions that the mere existence of the poles would be an offensive and upsetting reminder of the holocaust to Jews and would destroy social harmony are difficult to substantiate. And the connections between land-use planning and the social harmony arguments were too tenuous to be convincing. Consequently I found it difficult to

accept that the social harmony arguments constituted a proper material consideration. I therefore consider that the social harmony arguments do not have sufficient weight to amount to a planning objection which justifies dismissal or refusal of the proposals.
[2.16-2.19, 2.31-2.34, 3.30-3.33, 4.12-4.13, 4.33, 4.41-4.42, 4.58]

5.64 Objectors raised other objections against the proposals in addition to that concerning social harmony. Erection of poles, precedent, pedestrian safety, maintenance, burglary, vandalism, danger to birds and racist attacks were the most frequently made objections in the inquiry and in the written representations. With regard to objectors' assertions about difficulties in erecting the poles I find that I agree with the Council's submissions that this matter is not relevant to a planning inquiry. As for pedestrian safety, this does cause me concern in relation to the blind. But I would expect the Council as Highway Authority to ensure that the poles did not obstruct movement along the pavement in a way that was dangerous to the blind. I have carefully considered all the other objections but found that they were of insufficient weight to cause me to reach a different conclusion about the proposals.
[2.35-2.36, 3.7-3.9, 3.12, 4.6-4.8, 4.18, 4.31, 4.35, 4.39, 4.46, 4.53, 4.55, 4.58]

Conditions

5.65 The Council proposed 5 conditions in Document LBB/14. I consider that the whole of Condition 2 is appropriate; the second sentence deals with the separate matter of the type of paint to be used in particular locations as a security safeguard. Condition 3 is appropriate. I have already discussed the need for Condition 4 in paragraph 5.44. I consider that this condition is appropriate. Condition 5 is reasonable as it allows the Council to control minor adjustments to the precise location of certain poles which have to be moved because of implementation problems. I do not find that the objectors' proposed condition is necessary.
[2.25, 2.37, 3.10, 3.37-3.39, 4.2]

RECOMMENDATION

5.66 I recommend that the appeal for application A should be allowed and permission granted subject to the standard condition relating to the duration of the permission and to the conditions I have indicated in paragraph 5.65.

5.67 I recommend that the appeal for application B should be allowed and permission be granted with the exception of the proposals at location 13, Wildwood Road, subject to the standard condition relating to the duration of the permission and to the conditions I have indicated in paragraph 5.65. In making this formal recommendation I am aware that this second application is regarded as a fall-back application in case the first application was not accepted. In that context the decision on application B is redundant and of no value to the appellant.

APPLICATION FOR COSTS

5.68 I am submitting a separate report and recommendation on the application for costs which was made at the inquiry.

A handwritten signature in dark ink, appearing to read 'David Bushby', is written over a horizontal line.

David Bushby
Inspector