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11 January 1994

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

Sir

I have the honour to report that between 30 November and 13 December 1993, I held an inquiry at Hendon Town Hall into an appeals by the United Synagogue Eruv Committee against:

[A] the refusal of the Barnet London Borough Council to permit the erection of groups of 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 their decision on an application for a revised proposal in which the thickness of the wire was reduced to 0.3 mm at all locations, and the number of poles at Wildwood Road was reduced from 7 poles to 2, with the wire being suspended using existing lamp posts between the proposed wooden poles.

1. This report relates to an application for an award of costs made at the inquiry by the United Synagogue Eruv Committee against Barnet London Borough Council. I have submitted simultaneously, my appeal inquiry report.

SUBMISSION ON BEHALF OF UNITED SYNAGOGUE ERUV COMMITTEE

2. In support of the application, paragraphs 8,9,11 and 28 of Annex 3 of Circular 8/93 are relevant.

3. The Council's Committee failed to have regard to three matters: need, planning policy and trees. First, there was no consideration of need at all. There was therefore a failure to balance need against objections. The officer's report was silent on need. But there was no reason why the Council could not have considered need. The documents accompanying the application set out the benefits which would result from the Eruv. Second, the UDP Main Aim (1) and the Chapter 5 Ethnic, Religious and Voluntary Groups Policies ERGL.1-1.3 were not taken into account. Third, the evidence on trees was wrong. There needs to be substantial evidence and the members failed, for no good reason, to put poles in the trees. This could have been done. It is also clear from the officers' report that no objection on trees was raised. But Councillor Davis just adopted the ill-informed judgement of the Council arboriculturalist. If this judgement came after the decision to refuse, then it was unreasonable. And this matter affects the most sensitive location.

4. Paragraph 8 says that there should be substantial evidence, not just some form of evidence. Paragraph 8 also calls for all other material considerations: this should have included need.

5. Paragraph 9 deals with the rejection of officers advice and says that if this takes place it must be on sound grounds which explain why the decision was taken.

6. Paragraph 11 deals with conditions. It was quite clear from the cross-examination of Councillor Davis that he had no understanding of planning conditions.

7. Paragraph 28 refers to seeking further details of an application. The Council did not ask for the effects of the proposal on trees to be demonstrated. It could have done if it had wanted this information.

8. If any of these submissions are made out, it is likely that on the balance of probability the appeals need not have taken place.

SUBMISSION ON BEHALF OF BARNET LONDON BOROUGH COUNCIL.

9. In reply the Council find that it is hardly credible that this costs application has been made. The appellant must show that the Council acted unreasonably.

10. As for need, there is no reference to this in the planning application at all. There were just petitions. The benefit figures were only produced at the inquiry, and they were woefully lacking in precision. It is utterly preposterous and wrong to ask the Council to balance something on which it had no evidence at all. If there had been a substantial document on need with numbers, the officers would have dealt with it.

11. With regard to policy, the Ethnic, Religious and Voluntary Groups Policies are not relevant, and so there is no need to take them into account. The UDP social harmony paragraph 2.3.4 was dealt with by the Council.

12. On trees, the officers did say that the impact on trees would have to be considered and decided that this could be dealt with by condition. Members did consider trees. Both Councillor Davis and Councillor Scott took advice from a arboriculturalist. If the application is examined it is clear that a taut wire between poles might interfere with branches. And the appellants offer no evidence to show that trees would not be affected.

13. This case is easy; it turns on visual issues only. Why cannot members deal with such issues?

CONCLUSIONS

14. The appellant is claiming that the refusal of planning permission was unreasonable. Turning to the appellant's submissions, I find first, that the Council did fail to deal with need in its consideration of the application. It was clear enough from the document accompanying the application that the proposal was expected to be of benefit to specified groups of orthodox Jews in Barnet. I find second, that the Council could

have asked for more information about the impact of the proposal on trees, or could have asked for the poles to be put up in various locations to test the impact. I find third, that Councillor Davis did not understand about the difference between a condition and an informative.

15. These deficiencies in the Council's approach to the application are clear. I do not find however that these deficiencies amount to an unreasonable refusal of planning permission. It would seem very likely that even if all these matters had been properly dealt with, the Council would have still refused the application for the same reasons. While I do not agree with the Council's evidence on the impact of the poles and wire I consider that members are entitled to make their own carefully reasoned judgements on these visual matters. I found the reasons for refusal to be reasonable.

16. As for the submissions about the Council failing to consider UDP policies, I found the Council's approach to be reasonably sound. The fact that members went against officers recommendations is not in itself unreasonable. I found that at certain locations the arguments for and against the proposals were finely balanced. This fine balance was reflected in the evidence presented by the Council witnesses.

17. In short, I did not find that the Council's approach was unreasonable in a way that caused the appellant to incur expenses unnecessarily.

RECOMMENDATION

17. I recommend that no award of costs be made in favour the United Synagogue Eruv Committee against the Barnet London Borough Council.

I have the honour to be
Sir
Your obedient Servant



David Bushby

INSPECTOR