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Your ref: ~~CAF~~M/1871/AP1A&2A/PF

Our ref:

APP/N5090/A/93/224571

APP/N5090/A/93/229477

Date 20 September 1994

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78(1) AND (2)
APPEALS BY UNITED SYNAGOGUE ERUV COMMITTEE
APPLICATIONS NOS. ERUV 1 AND ERUV 2
ERECTION OF STREET FURNITURE IN VARIOUS LOCATIONS IN LB BARNET**

1. I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the inspector, David Bushby, BA (Hons) MCD MRTPI, who held a local inquiry into your clients' appeals:-

(A) (APP/N5090/A/93/224571 - Application No. ERUV 1) against the decision of the Council of the London Borough of Barnet to refuse planning permission for the erection of street furniture comprising groups of poles (usually two and totalling 85) between which is suspended at high level a wire, to designate the perimeter of a nominated "Eruv"; and

(B) (APP/N5090/A/93/229477 - Application No. ERUV 2) on the failure of the same Council to give, within the prescribed period, notice of their decision on your clients' application for planning permission for a revised proposal (a total of 80 poles) in which the thickness of the wire was reduced to 0.3mm 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;

both at various locations within the London Borough of Barnet.

2. A copy of the inspector's report is enclosed but, for convenience, a copy of his conclusions are annexed to this letter. The inspector recommended that both appeals be allowed and permission granted subject to the imposition of conditions, and, in respect of appeal (B), that the proposals at location 13, Wildwood Road, should be excluded.

3. A few written representations from third parties were received too late for the inspector's consideration. Although the Secretary of State has carefully considered these

representations, they do not raise any new issues and accordingly do not affect his decisions.

THE SECRETARY OF STATE'S CONSIDERATION OF THE APPEALS

4. In accordance with Section 70(2) of the Town and Country Planning Act 1990, the Secretary of State has had regard to the Barnet Unitary Development Plan ("UDP"). Section 54A of the Town and Country Planning Act 1990 requires that where regard is to be had to the development plan the determination is to be made in accordance with the plan unless material considerations indicate otherwise. The Secretary of State agrees with the inspector, IR 5.6, that none of the policies identified by the main parties are directly relevant to the very unusual nature of the appeal proposals. However, he considers that the general policies identified by the inspector, also IR 5.6, seek to conserve and improve the environmental quality of the Borough. If, therefore, the appeal proposals conflict with those policies, other material considerations would need to outweigh that objection if the appeals are to succeed.

5. He agrees with the inspector that the policies in Chapter 5 of the UDP are directed at the provision of meeting places and that the most that could be inferred from the relevant section of the UDP is that the needs of ethnic, religious and voluntary groups should be recognised.

6. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is also relevant to the Secretary of State's consideration of the appeals because some of the locations concerned are in the Hampstead Garden Suburb Conservation Area.

7. The Secretary of State notes the inspector's observation (IR2.16 to 2.19) that the proposal has raised a great deal of controversy and that by no means all of the objections raised are relevant to planning. The Secretary of State has disregarded the suggestion made by the appellants (IR2.19) that the Council took irrelevant considerations into account and that the weight given to the Council decision should consequently be lessened. The Secretary of State has given careful consideration to the evidence given by all the parties.

Main Issues

8. The Secretary of State agrees with the inspector (IR 5.1) that the main issues to be decided in these appeals are:-

- (1) the effect of the poles and wires on the character and appearance of the street scene in various parts of Barnet;
- (2) the effect of the proposal on the appearance and character of particular parts of Hampstead Garden Suburb Conservation Area;
- (3) whether, if there are any planning objections to the

proposal, the need for the proposal outweighs these objections; and

- (4) whether there are any other material considerations which are sufficient to amount to a compelling planning objection.

Issue 1.

9. The Secretary of State agrees with the inspector (IR 5.43), for the reasons given by him (IR 5.8 - 41) that, while the proposed poles would add to the street furniture, there is no location where the overall impact would seriously harm the character and appearance of that particular location. Nor was any evidence presented to convince the Secretary of State that the proposed poles would have any adverse visual impact on the environment. Having carefully considered the evidence before him the Secretary of State does not consider that there would be an adverse impact on amenities.

Issue 2.

10. The Secretary of State agrees with the inspector (IR 5.56), for the reasons given by him (IR 5.47 - 5.56) that, while the arguments on impact in the Conservation Area are more finely balanced, the erection of the poles would leave the Conservation Area substantially unharmed and the evidence that was advanced against the erection of the poles was insufficient to justify dismissal or refusal of the appeal proposals.

Issue 3

11. The Secretary of State agrees with the approach of the inspector (IR 5.57) that as neither the planning objections on grounds of visual impact on the street scene nor the effect of the proposal on the character of Hampstead Garden Suburb Conservation Area were sufficient to justify rejection, there is no cause to examine whether the need for the proposal outweighs these objections.

Issue 4

12. The Secretary of State does not find it necessary to decide whether social harmony is capable of amounting to a material consideration because he does not consider that the arguments adduced on this issue are of sufficient weight to amount to a planning objection which merits refusal of the appeal. He also agrees with the inspector (IR 5.64) that the other objections raised are of insufficient weight to cause him to reach a different conclusion about the proposals.

13. In conclusion, the Secretary of State is satisfied that the appeals' proposals do not have any adverse visual impact on the environment. Accordingly, the proposals are not in conflict with the general policies of the plan as identified by the inspector (IR 5.6 and 7). He is satisfied that there are no other material considerations which are sufficient to amount to a compelling planning objection.

14. The Secretary of State therefore agrees with the inspector's

0 conclusions and accepts his recommendation. With regard to conditions, with the exception of proposed condition 5, the Secretary of State accepts the reasons for the conditions put forward by Barnet Council but considers the wording should be adapted to accord with the principles laid down in DOE Circular 1/85. With regard to condition 5, the Secretary of State considers that even slight movement of the poles could adversely harm the street scene and concludes that the condition suggested by the Council is too wide ranging. However, note has been taken of the inspector's suggestions (IR 5.15, 5.20 and 5.45) that movement of the western poles at Locations 6 and 12 could be achieved by condition without harm to the street scene. The Secretary of State is satisfied that such a condition need not substantially alter the substance of the proposal applied for and accordingly applies this condition.

15. For the reasons given above and by the inspector, which he adopts as his own, the Secretary of State allows your clients' appeals and hereby grants the planning permission referred to in paragraph 1 of this decision, subject to the following conditions:-

APP/N5090/A/93/224571 - Application No. ERUV 1

- (i) The works to which this consent relates shall be begun before the expiration of 5 years from the date of this letter.
- (ii) Development of the site shall not begin until details of the external colour of the poles have been submitted to and approved by the local planning authority. Such details shall incorporate the use of a non-drying coating above a height of 2 metres measured from adjacent ground level at the following locations:-

location 01 Lichfield Road NW2
 03 Hendon Way NW2
 04 Lyndale Avenue NW2
 09 West Heath Road NW2
 15 Aylmer Road NW2
 16 Bancroft Avenue N2
 18B Prospect Place N2
 21 Squires Lane N3
 25 Watford Way NW4
 26 Colindeep Lane NW4
 34 Ashley Lane NW4
 35 Great North Way NW4

and the works hereby permitted shall be carried out and completed in accordance with the details so approved.

- (iii) The line used to span the poles hereby permitted shall be Drennan Special Matt Sub-Surface Green Fly Leader fishing line 0.3mm in diameter or such other similar type 0.3mm diameter monofilament line as

agreed in writing with the local planning authority.

- (iv) No works to trees, including cutting or damage to branches and roots shall be undertaken in implementing the approved development.
- (v) The western poles at Locations 6 (Finchley Road) and 12 (North End Road/Way) hereby permitted shall be relocated in positions as shall be submitted to and agreed in writing with the local planning authority.

APP/N5090/A93/229477 - Application NO. ERUV 2

- (i) The works to which this consent relates shall be begun before the expiration of 5 years from the date of this letter.
- (ii) Development of this site shall not begin until details of the external colour of the poles have been submitted to and approved by the local planning authority. Such details shall incorporate the use of a non-drying coating above a height of 2 metres measured from adjacent ground level at the following locations:-

location 01 Lichfield Road NW2
 03 Hendon Way NW2
 04 Lyndale Avenue NW2
 09 West Heath Road NW2
 15 Aylmer Road NW2
 16 Bancroft Avenue N2
 18B Prospect Place N2
 21 Squires Lane N3
 25 Watford Way NW4
 26 Colindeep Lane NW4
 34 Ashley Lane NW4
 35 Great North Way NW4

and the works hereby permitted shall be carried out and completed in accordance with the details so approved.

- (iii) No works to trees, including cutting or damage to branches and roots shall be undertaken in implementing the approved development.
- (iv) The western poles at Locations 6 (Finchley Road) and 12 (North End Road/Way) hereby permitted shall be relocated in positions as shall be submitted to and agreed in writing with the local planning authority.

16. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission or consent has a statutory right of appeal to the

Secretary of State if consent, agreement or approval is refused, or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

17. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

The Secretary of State's consideration of the Application for Costs

18. The submissions made on behalf of your clients in support of their application for costs, the reply on behalf of the Council and the inspector's comments and recommendation on the matter are set out in the inspector's Costs Report, a copy of which is enclosed. In planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeals and costs are awarded only on the grounds of unreasonable behaviour. Accordingly the application for costs has been considered in the light of Department of the Environment Circular 8/93, the inspector's report of the inquiry, his separate report on costs, the Secretary of State's decision contained above, the appeal papers and all relevant circumstances. The inspector recommended that no award of costs be made.

19. The Secretary of State has considered all the evidence in this case and agrees with the inspector's comments and accepts his recommendation. Accordingly, the application for an award of costs against the London Borough of Barnet is hereby refused.

20. A copy of this letter has been sent to the London Borough of Barnet.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'G C Wines', with a horizontal line underneath.

G C WINES
Authorised by the Secretary of State
to sign in that behalf

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