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David Schreiber Esq.
United Synagogue Eruv Committee
9 West Heath Road
London NW3 7UX.

Your reference

Our reference

Date

GAM/1871/S1000/CAW
21st September 1994

Dear David,

ERUV APPEALS

I am writing further to my faxed messages to your house yesterday which confirmed that the decisions on the two Eruv appeals were now available and that both had been allowed. We arranged for a copy of the Inspector's report and the Secretary of State's letter to be delivered to you that evening. Also enclosed with this was a copy of the Inspector's report and the Secretary of State's decision in respect of the application for an award of costs and you will note that it has been decided that there should be no award of costs in this case.

In respect of the second appeal, the option involving use of the existing lampposts in the Wildwood Road, the Inspector clearly saw this as a fallback position and in Paragraph 5.49 of his report referred what he considered to be insurmountable problems over the implementation of the proposal at this location because of the Council's refusal to permit the use of its lampposts for hanging the wire. He went so far as to state that he did not consider there to be a realistic proposal on which to make a decision. However in his recommendation he suggested that this appeal should be allowed with the exception of the proposals at location 13, Wildwood Road, subject to various conditions. His recommendation in respect of the original appeal, incorporating the seven new poles at Wildwood Road was that the appeal should be allowed again subject to various conditions. In his conclusion the Inspector did not differentiate between the conditions in either appeal.

The Secretary of State's decision seems to be at variance with the Inspector's report in respect of two matters:-

1. There appears to be no reference in his decision to the omission of location 13, Wildwood Road, in the second appeal scheme.

Ref: 1871

To: D. Schreiber Esq.

21.9.94.

2. The first appeal decision has a condition requiring you to use the Drennan Special Matt Sub-Surface Green Fly Leader fishing line 0.3 mm in diameter or something similar whereas the second appeal scheme contains no such condition. This probably arises because you had identified that as being the material which you would use as part of the second application submission but not the first.

Apart from this difference the two permissions are subject to four conditions. These raise the following matters:-

1. The first condition requires that the development is begun within five years of the date of the permission.

2. The second condition prevents development commencing until details of the external colour of certain poles have been submitted to and approved by the Council. It also requires you to incorporate details of a non-drying coating on those parts of the pole over 2m higher than ground level. The condition identifies the various sites where this requirement needs to be followed and then requires you to undertake the works in accordance with the details that have been approved.

3. Condition 3 on the second appeal and four on the first appeal prevents any work being undertaken to trees including cutting or damaged branches and roots being undertaken in implementing the approved development. From our various trial runs with the dummy pole I believe that it should be possible to comply with that part of the condition which prevents cutting or damage to branches. The roots might technically be difficult in that you are unlikely to be able to determine whether there are any roots in that part of the ground where you have to drill a hole to insert the pole. Equally if you were unable to detect these roots it is unlikely that the Council will be able to prove that you have cut a root without digging a much larger hole around the pole thereby running the risk of cutting more roots themselves. I suspect that this condition is therefore unlikely to be problematical.

4. Condition 4 on the second appeal and five on the first appeal relate to minor amendments to the positions of poles in two locations in accordance with difficulties perceived by the Inspector and identified in his report.

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I contacted John Steel and left a message for him regarding the outcome and he has responded with a message left on our answerphone. Like us he identified that the decisions represent marvellous news but he also flagged up a concern that there is still a six week period during which challenges to the decision can be lodged. No doubt there are various lawyers scanning through the decisions at the moment trying to identify whether any grounds for such a challenge exist. Beyond this and assuming that no such challenge is made there is obviously work still to be done with both Barnet Council and the Department of Transport in terms of the location of the poles on the public highway. This is a matter which has been held in abeyance pending the outcome of the appeals but no doubt you and your colleagues will wish to discuss it in relation to implementation of the proposals in the near future.

I trust these comments are of assistance to you. I have not spent a great deal of time in writing to you analysing the Inspector's comments on the various sites. I see little point in doing this except to point out that in certain instances he did find the matter to be fairly finely balanced. He struck me as an extremely pragmatic individual and I suspect this is why he has come down on your side rather than the Council's at these locations.

Finally, please note that I am copying this letter to Laurence Begner, Edward Black and John Steel and that I will be sending a copy of the Secretary of State's decision and the Inspector's report on both the appeals and the costs applications to them.

With kind regards.

Yours sincerely,



Graham Murdoch

c.c. L. Begner Esq.
J. Steel Esq.
E. Black Esq.

Enc.