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Town Planning and
Research Committee
24 February 1993

SUPPLEMENTAL REPORT OF THE
CONTROLLER OF DEVELOPMENT SERVICES

AGENDA ITEM 3 - ESTABLISHMENT OF AN
ERUV IN THE BOROUGH

1.0 Introduction

1.1 This report:

- lists amendments to the text of the main report circulated on 16 February 1993.
- gives details of amended proposals for locations 25 and 26.
- reports representations about the proposal submitted between the closure of the main report and earlier today, 24 February.

2.0 Amendments to the text of the main report

2.1 Condition 3 (page 2) should read:

3. The wire used to span between posts shall be galvanised braided steel and be 3mm in width.

2.2 Paragraph 3.1 (page 3) should read:

Town Planning and Research Committee Decisions
11.11.92-7 and 16.12.92-4.

2.3 Paragraph 8.2.8 (page 6), second line, delete "from 20 residents" and insert "from 34 residents".

2.4 Paragraph 8.2.10 (page 6), second line, delete "from 20 residents" and insert "from 32 residents".

- 2.5 Paragraph 8.3.4 (page 14), sixth line should read "buildings on land in a conservation area".
- 2.6 Paragraph 8.3.5 (page 15), penultimate paragraph, line 10 should read "highways legislation are not relevant".
- 2.7 Appendix A, page 19, Map Ref 13 Wildwood Road (pavement) - Number of poles equals 7, not 6.
- 2.8 Appendix A, page 19, Map Ref 32 Childs Hill Walk (footpath) - Type of posts would be medium, not small.
- 2.9 Appendix A, page 19, total number of posts equals 85.
- 2.10 Appendix A, page 86, line 2 under Summary of specific objections should read "has no objection".
- 2.11 Appendix A, page 90, text under Post and wire construction should read:

- 2 posts
- 5.5m tall
- 76mm diameter
- Olive green finish

- 2.12 Appendix A, page 96, the second line under the Planning Appraisal should read "approx. 10m east of path".

3.0 Locations 25 and 26 - Amended Proposals

- 3.1 The applicants have submitted amended proposals for locations:

- 25 - Watford Way, NW4; and
- 36 - Great North Way, Copthall, NW4

- 3.2 Details of the amended proposals (which should be substituted for pages 78 and 79 and 98 and 99 of the main report) are attached as appendices A and B respectively.
- 3.3 In relation to location 25, one pole would be moved further away from the boundary of 322 Watford Way. In the case of location 36, two poles would be moved to span the vehicular access to Copthall playing fields.

In both cases it was not considered necessary to undertake further consultations as these amendments are of a minor nature.

4. Further representations about the proposal

4.1 Between closing the main report and earlier today, 24th February, further representations about the proposal have been received.

4.2 In summary:-

26 letters have been received in support and 23 further signatures to the petition in support mentioned in 8.2.7 of the main report;

2 petitions, one joint letter containing 14 signatures and 76 individual letters have been received objecting to the proposals. A further letter from the authors of the letters forming appendix B to the main report and is attached as appendix C.

4.3 The first petition contains 1975 signatures and reads:

"We, the undersigned, members of many different races and religions, including Jewish, object to the proposal to erect posts and wires to mark out Hendon, Golders Green, Hampstead Garden Suburb and parts of Cricklewood as an Orthodox Jewish "Domain". Such structures would be unattractive and would detract from the amenities of the area. Further, we feel that it is wrong for any religious group to attempt to mark out any area of this country for the private convenience of a small minority, and that sectarian boundaries would not promote the racial harmony which most responsible people desire, and which we have until now enjoyed here."

4.4 The second petition contains 193 signatures and reads:

"We the undersigned residents of the Borough of Barnet wish to formally register that we are against the erection of the Eruv.

Some of the reasons are as follows:

- It will be unsightly.
- It will create a ghetto in the Borough.
- It will only benefit a small minority of people in the Borough.
- We feel that once one has been erected many more areas will follow suit."

4.5 The joint letter raises objections already covered in 8.2.10 and 8.2.11 and questions relating to cost and liability which are not matters for this Committee.

4.6 The 76 individual letters raise no reasons for objection which have not already been covered in the report.

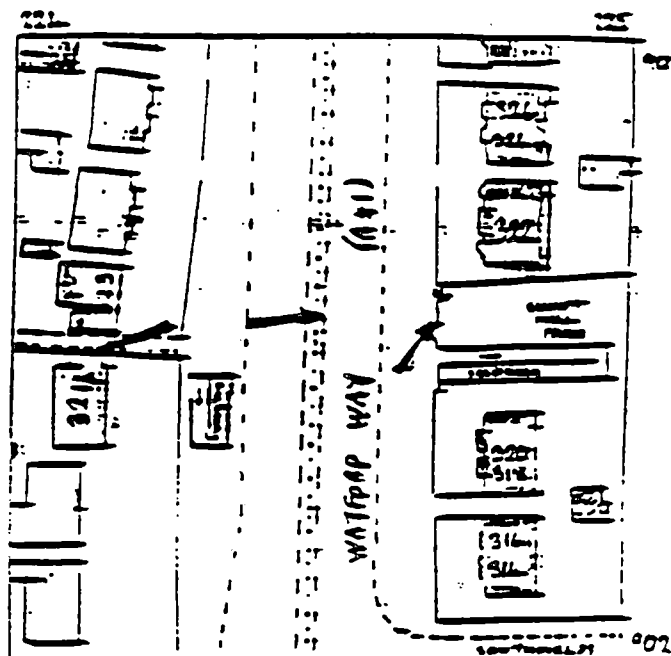
- 4.7 Regarding the letter attached as appendix C the Controller of Legal Services advises that the legal issues raised have been considered in the main report insofar as such issues are relevant to the deliberations of this Committee.
- 4.8 English Nature are concerned that the poles will be earthed, visible to birds and may encourage flocks of roosting birds. In this respect the poles will be earthed and the wire should be visible to birds. The London Ecology Unit comments are included in the report and a further letter from them raises no new issues.
- 4.9 Mr Angus Mackenzie, who sits on the Road Safety and Access Committees as a spokesman for the disabled, is registering a strong objection on the grounds that the siting of the posts will obstruct the visually handicapped. The Committee refer to comments made in 8.3.3 relating to this objection.

Location

25
Watford Way
NW4

Post and wire construction

3 posts
6.5m tall
116mm diameter
Olive green finish

Summary of specific objections

Occupiers of 322, 323 and 324 Watford Way raise the following objections:

1. Sunnyhill Park is an area where birds nest and any loss through the young flying into the wire would be disastrous.
2. Poles already in situ are rusted and unattractive.
3. Poles should be erected outside the homes of those who want the Eruv.
4. Posts would encourage dogs to foul around the area.
5. Assume that the proposal is desired by a small extremist minority.
6. Would be detrimental and a aesthetic loss to the area.
7. Would set a precedent for all other religious communities.
8. Drawback for the sale of property.
9. Post would be an eyesore overlooking No.323.

Planning appraisal

Post on west side would be located next to the flank wall of No.321's single storey garage. Post would not obscure flank window and located behind the front building line would not affect the outlook from No's 321 and 323. Post required on central reservation due to the width of the road. Post on east side of the Watford Way would be located approx. 6.5m from the boundary of No. 322 to the south of the British Telecom phone box. It is considered that the post would be located a sufficient distance from No. 322 to not affect the outlook from the property. Further the post would not affect the spread of the lime tree located on the boundary with No. 322 forward of the property's front building line. In view of the prolific number of lamp posts and traffic signs on the Watford Way it is considered that the posts would blend in with the street scene and would not be detrimental to the residential amenities of nearby properties.

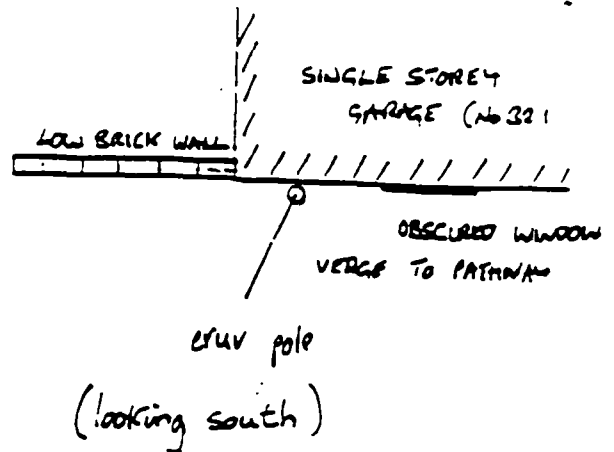
25 WATFORD WAY NW-

SCHEMATIC SHOWING LOCATION OF POLES

1/ WEST POLE

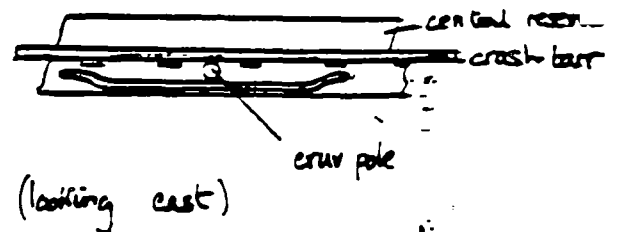
BY THE NORTH FLANK WALL OF THE SINGLE STOREY GARAGE OF NO 321 WATFORD WAY WHICH IS THE VERGE OF THE PEDESTRIAN PATHWAY BETWEEN 321 & 323

THE WINDOWS OF THE GARAGE, WHICH ARE WITHIN 1m OF THE POLE ARE OBSCURED INTERNALLY



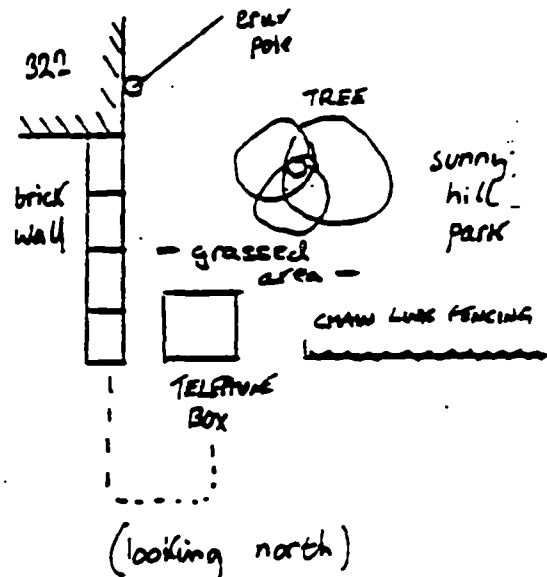
2/ CENTRAL POLE

ON CENTRAL RESERVATION WHICH COMPRISES A DTP TRUNK-ROAD BARRIER SURMOUNTED WITH MESH FENCE AND A MESH GUARD RAIL. THE POLE WOULD BE ENCLOSED IN ADDITIONAL BARRIERS TO DTP STANDARD



3/ EAST POLE

BY THE SOUTH FLANK WALL OF THE SINGLE-STOREY EXTENSION TO NO 322 WATFORD WAY, APPROX 1m BEYOND THE END OF THE BRICK WALL WHICH BOUNDS NUT HILL PARK



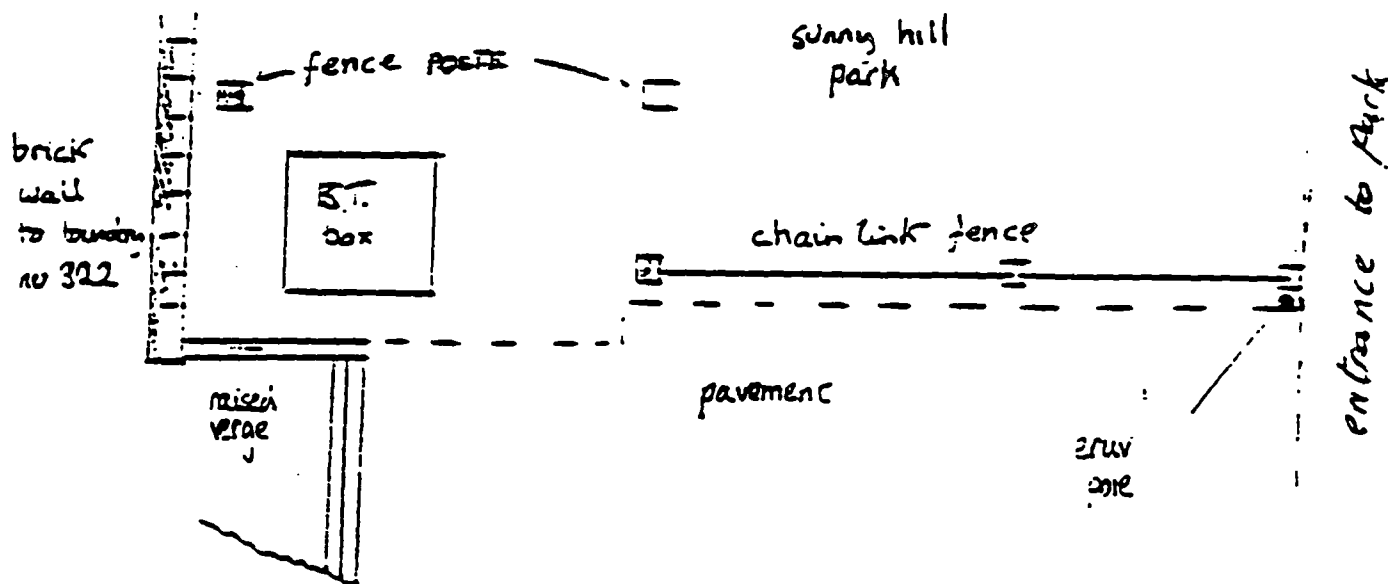
25

WATFORD WAY NWL

AMENDMENT 17/2/03

EAST POLE MOVED c.1.3m
SOUTH WEST TO NORTH (LEFT HAND)
SIDE OF ENTRANCE TO SUNNY HILL
PARK

- REASON
- 1) TO AVOID ERECTION OF AN
ERUV POLE IN RECREATIONAL
LAND
 - 2) TO MAXIMISE DISTANCE OF POLE
FROM No. 322 WATFORD WAY



SCHEMATIC OF EAST POLE LOCATION

Scale = 50:1

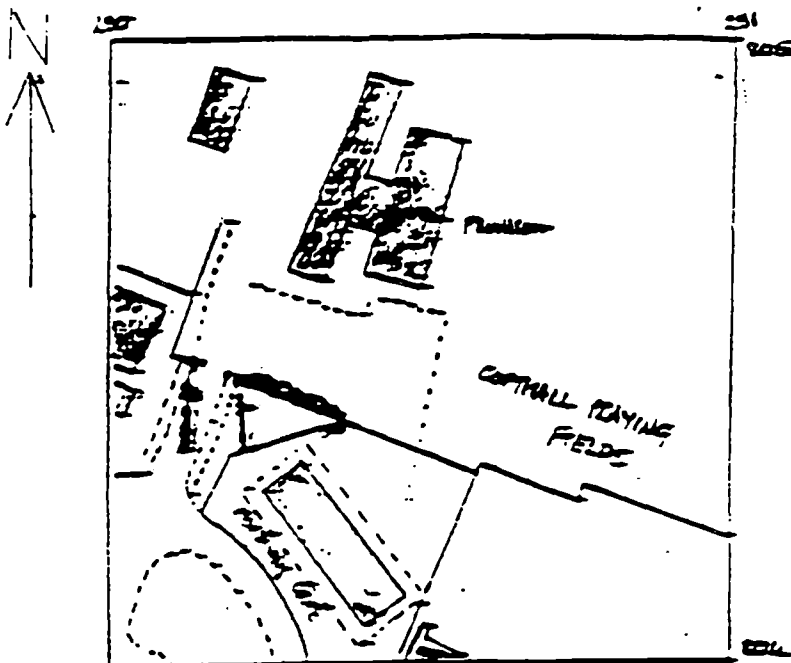
1m

Location

36
Great North Way, Copthall
NW4

Post and wire construction

2 posts
3.5m tall
76mm diameter
Grey finish

Summary of specific objectionsPlanning appraisal

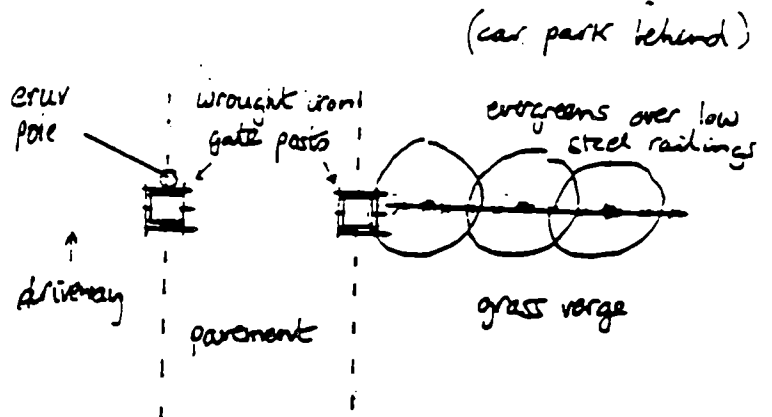
Post on west side of the entrance to Copthall stadium would be located next to existing "No horse riding" sign and lamp post. Siting would be acceptable and would not obscure existing signs. Post on east side would be located at the back edge of the pavement next to the pedestrian access to Copthall. Degree of screening offered by existing conifers. The location of the proposed posts would not affect the outlook of the occupiers of Northway Court and are acceptable.

36 GREAT NORTH WAY (NWL) ENTRANCE TO COPTHALL PLAYING FIELDS

SCHEMATIC SHOWING POSITION OF POSTS

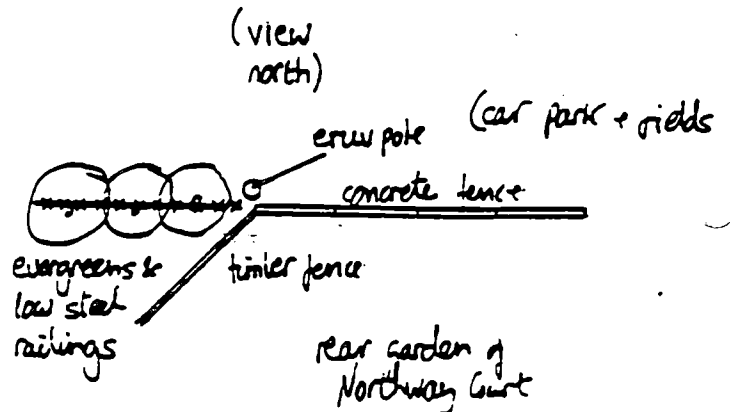
1/ WEST POLE

ADJACENT TO THE WEST WROUGHT IRON GATE POST TO THE PEDESTRIAN ENTRANCE TO COPTHALL PLAYING FIELDS.



2/ EAST POLE

AT EAST EXTREMITY OF EVERGREEN AND STEEL RAILINGS AT THEIR JUNCTION WITH THE CORNER WALL (CONCRETE SLABS) OF "NORTHWAY COURT"

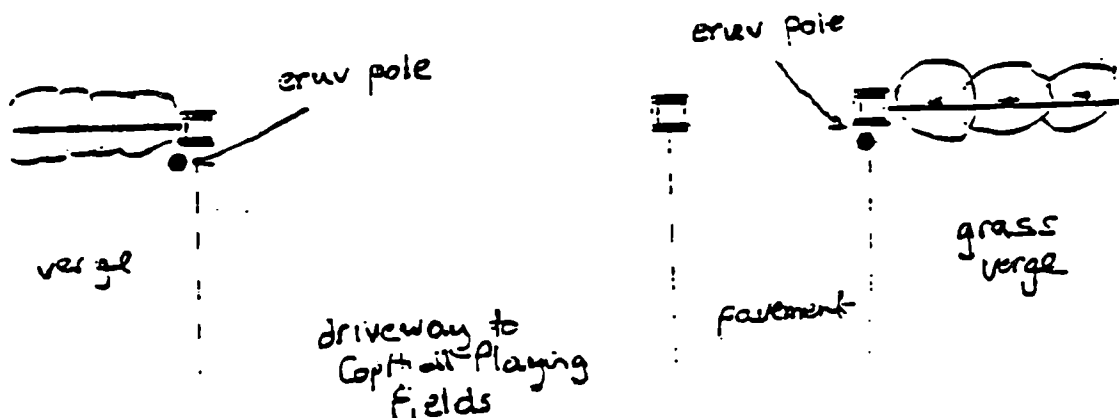


AMENDMENT 17/2/95

WEST POLE MOVED TO EXTERIOR OF GATE POST (LHS), VEHICULAR ACCESS
EAST POLE MOVED TO EXTERIOR OF GATE POST (RHS), PEDESTRIAN ACCESS

REASON 3) TO AVOID ERECTION OF POLES IN RECREATIONAL LAND
3) TO AVOID CONSTRUCTION IN UNADOPTED VERGE (TRIANGULAR AREA)
AT NORTH WEST OF NORTHWAY COURT.

SCHEMATIC



- view north -

To the councillors and to Whom it may concern

Mon, Feb 22, 1993

Further observations of 34 constituents on report dated 24th. Feb.93 and background papers.

The letter attached dated 26th. Jan.93, is Barnets reply to the Department of Transports' two letters of 12th. and 8th. Jan. 93, in which the Dept. stated, beyond any possible misunderstanding, and thereby ruling out this particular Eruv proposal, that:

"There is no power under Highways legislation to permit posts to be erected for the purposes of the proposed Eruv on land which retains Highway status"

It is common ground that Barnet has been, and is proceeding under a power which allows a Street/Highway Authority, to "grant licences for APPARATUS to be placed in the street/highway."

The argument between Barnet and the Dept. set out in the letter attached (which please read carefully) turns solely on the question of whether Eruv wires and posts are APPARATUS or not. If the Dept. is right in their contention that, "Eruv posts and wires are not apparatus", neither they, nor Barnet have power to licence the Eruv-with all the consequences that we have previously outlined following from this.

This correspondence demonstrates that there is real doubt about the Councils power to licence an Eruv. It cannot be appropriate in a publicly contested matter of consequence, for an authority to proceed when a doubt as to whether it has the power is extant.

Further Planning Considerations:

The unprecedented planning issue to which we have referred you again and again in our letters, remains occluded, notwithstanding Barnets report to you. It is this:

Is it appropriate to allow the development ON THE PUBLIC HIGHWAY of post and wire structures the sole function of which is to determine a symbolic boundary for the benefit of a section of the population?

This question emerges in a confused fashion only in the convoluted language of the attached letter which is not included in the report, but which we place before you.

You have to answer this question in the light of the following facts:

1) The enormous number of material objections which we and official bodies and individuals have made. These should be read. You will note that Barnets report now accords with our submission to you on materiality in all but matters of emphasis. In particular it says(8.31) that "whether any objections are material depends on the nature of the application and the surrounding circumstances"

This is in direct contrast to the position of Barnets Chief Planner in this particular matter, who said in his original memo. of 16th. July 1992 and who has throughout this matter continued to say:

"The only aspect of the matter with which Barnet planners will be concerned will be the impact of the wire and poles on the local environment and no change of use is involved. However I will take legal advice on this" There is no such legal advice in the background papers, or written advice on legal issues and almost nothing on safety issues, both of which matters are the concern of the Dept. of Transport and other bodies. It is clear that having regard to the nature and surrounding circumstances of this application most, if not all of the objections that have been raised, are indeed, material planning considerations. It is particularly noteworthy, that the report fails to single out any specific objections, as being, "unrelated to the nature and circumstances of the application"

2) That original memo dated 16th. July 1992 does not accord either, with the clear terms of Sec

277(8) of the T&CPA 1971 now 1991 which states: "In relation to any application for development special attention must be paid to the desirability of preserving or enhancing the character and appearance of a conservation area."

The responsibility of a planning committee is clear(8.34) A post and wire construction, in a Conservation Area, cannot find favour with any planning committee.

3) Public Safety is in issue (8.32). See letter Dept of Transport which says the "Eruv gates" as proposed are likely to endanger persons.(12/1/92) and that would involve consequential criminal liability. This objection is not mentioned in Barnets Report. We refer you also to a letter in the background papers to Barnet, from Superintendent Hampstead Heath (not listed as objector) dated 2nd. April 1992 which states that the "structures raise issues regarding partially sighted people"

4) The boundary defined by the Eruv is wholly unlike administrative boundaries (including Parish boundaries), all of which, have been specifically validated by specific Acts of Parliament: the Eruv boundary has not - as yet, been so validated. By way of further contrast the Eruv boundary, unlike such administrative boundaries; is symbolic only, and it is visible, and it has no clear meaning to most highway users, and is highly objectionable to many people(8.32)

5) The City Corporation has unequivocally refused its consent to the proposal to use the fence between Golders Hill Park and Sandy Lane on the southern park boundary, as part of the Southern boundary. (as shown in the proposal and the plan which accompanies it). The Eruv Committee and now the report says in contrast, "The alternative route for our Eruv perimeter, runs around the Northern perimeter and utilises existing fences of acceptable standard" and "as far as the carrying Jewish carrying public is concerned our instruction will be to omit the Park until the Corporation erect their new fence"

(This statement contained in the Eruv Committees letter dated 23rd Sept. 92 to Barnet, in the background papers, raises a very strong doubt as to necessity for any visible physical markings for the Eruv boundary whatsoever and makes the whole project unnecessary). How the boundary gets from a 'gate' by Hampstead Way across North End Road to the next gate in Hermitage Lane is not shown or explained either by the plan or by the statement as the Northern fence clearly does not go to Hermitage Lane. This leaves an unascertainable length (almost a mile of the actual Southern boundary) unspecified.

The Dept of Transport clearly, have not, agreed to the proposed 'gates' on any trunk roads included in the scheme. There appear to be six trunk roads so included: Hendon Way-A41 A598 Lyttleton Rd.A1 A406 North Circular Great North Way (2) Watford Way. The boundaries of the proposed Eruv are not therefore ascertainable and the application is not therefore viable.

6) Under the Highways Acts(including New Roads & Street Works Act 1991) Parliament has given Highway Authorities specific powers in respect of street lighting, street barriers, waste bins, trees, special amenities for streets from which vehicles are excluded (Sec.115A/E Highways Act 1980) provision for the disabled and blind-Highways Act 1980{Sec 175A}, drinking fountains, public monuments; it has not as yet given powers for Eruvs. It is therefore clear, that Parliament has the power to licence an Eruv: It is not clear that any other authority has such power.

Each one of these six substantial planning considerations, must require a planning committee to refuse this application. It does not appear to us that there is a single substantial planning consideration, mentioned in the report before you, and prepared by the Borough, whereby the Eruv would, in the words of Barnets overall policy G1, "maintain and improve the character and quality of the environment throughout the Borough".

From thirty four constituents whose names and addresses have been previously supplied.

R Devenport Esq
London Network Management
Division
Department of Transport
London Regional Office
Room C7/02, 2 Marsham Street
LONDON SW1P 3EB

Mr Penhey
2510

HSP.6640.JMP/CP

²⁶
~~25~~ January 1993

Dear Sir

Hendon & Golders Green Eruv

I write in response to your letter of 12 January addressed to Mr Skinner. You indicate that the Department has no power to permit the posts to be erected.

I consider that a power does exist. Section 50 of the New Roads and Street Works Act 1991 enables the street authority to grant licences for apparatus to be placed in the street.

My assistant, Mr Penhey, has discussed the matter over the telephone with your legal adviser, Mr Thomas. I understand that your Department contends that the posts are not "apparatus", on the grounds that they are symbolic in nature, rather than functional. For the reasons given below I cannot, I regret, accept that the posts are merely symbolic or that, in any event, the distinction which you draw between symbolic and functional items has a bearing on whether they may properly be described as apparatus.

I think it is common ground between us that neither the 1991 Act nor the Highways Act 1980 provide any useful definition of the word "apparatus". Mr Thomas has been kind enough to let me have the report of a decided case in which the meaning of the word was considered. The Court was of the view that the word should be given its natural and ordinary meaning. Regard was had to a dictionary definition: "an assemblage of appliances or materials for a particular use". The posts are certainly materials. It is clear that they have a use. They serve to assist in demarcation of a boundary. This is an actual, and not a notional, boundary. The posts and wires will not, of course, prevent the passage of traffic. However, it is not a necessary concomitant of boundary definition that the objects or structures intended to show the line of that boundary should be so constructed as to form a physical barrier.

Cont'd

Even if the symbolic or functional nature of the posts is a relevant factor (and this is not conceded) your Department's position appears to be as follows. The authority for the placing of the wires across the highway will be a consent under Section 178 of the Highways Act. This Section relates to "any overhead beam, rail, pipe, wire or other similar apparatus". A "wire" is therefore "apparatus". There appears to be no requirement that the wire should have a practical function. Your Department is willing to consider granting consents for wires which you say are symbolic but which are nevertheless apparatus. It is surely inconsistent for you to argue that posts are not apparatus because, in your view, they are symbolic.

It ^{will} ~~would~~ be appreciated that I refer to Section 178 not because it authorises erection of the posts but because it assists in defining "apparatus". If overhead beams, rails or pipes are apparatus, then it seems clear that posts must also be apparatus. They are, effectively, similar structures which are placed vertically, rather than horizontally.

I hope that, in the light of the foregoing, you are able to agree that Section 50 of the 1991 Act does in fact provide the appropriate power to licence the installation of the posts. I look forward to receiving your confirmation.

Yours faithfully



for Controller of Legal Services