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12th June 1998

Member of Development & Protection Committee
Barnet Council

Dear Councillor

Officers' Report on Eruv 4 Application

The Report recommends that you approve the Application. However, the discussion on the Eruv's civil rights implications (pp20-22) misrepresents or ignores key objections, including the coming implementation into British law of the European Convention on Human Rights. Consequently, we believe that approving the Application could put Barnet Council in breach of its duties as the local planning and highways authority.

In addition, as civil rights issues were ignored by the Public Inquiry, the previous Secretary of State was not in a position to take them into account. Therefore, these are additional concerns of considerable weight affecting all of the locations, invalidating conclusion 8.3.10.vi and justifying refusal of the whole Application.

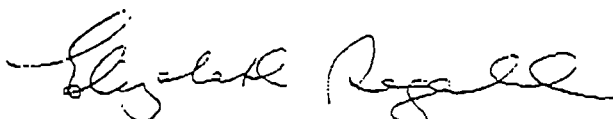
Our detailed reply to the Report is enclosed. In summary:

1. The Report fails to state that the poles are at the rear of pavements primarily to meet a religious stipulation, whose purpose is to cause obstruction to free passage by creating impassable gaps at the rear of pavements to form the actual Eruv Boundary.
2. The Report ignores that as a result everyone would be compelled to pass through one of the privately-owned religious symbolic 'gateways', and that for some citizens this experience will deny them their right to enjoy their use of Barnet's highways.
- 3 It is absurd to claim that the poles have significance only to orthodox Jews (p20). If this were true, the Council has the duty now to justify to the public the purpose of apparently useless poles-and-wire constructions in their streets, i.e. passage through the Boundary.
4. Eruv makers in Pennsylvania obtained consent for the use of houses as part of the Eruv Boundary to conform to ancient religious requirements, showing respect for the home, and Barnet should do likewise. The acceptance by Barnet of the £4000 gift from the Eruv Committee is regarded by the latter's religious supervisory body as symbolically over-riding the requirement for individual consents. Barnet should show respect for the home by requiring planning permission for the religious use of these dwellings.
5. The Officers appear to misunderstand the relevance of Section 19A of the Race Relations Act. Only persons of Jewish ethnicity could benefit from the Eruv installations, therefore planning permission would be discrimination. In addition, the absence of any benefit to people of another ethnicity is not subjective, but a fact (8.3.4.3).

As you know, it is your responsibility to vote according to your personal judgement, not blindly to accept Officers' Reports or local party policies.

We urge you not to vote in favour of a proposal which allows religious law to override human rights.

Yours sincerely,



(Two Eruv rituals are required for the 'hi-jack': the gaps of no more than three handbreadths between each end of contiguous houses and the adjacent poles; and acceptance by the local authority of a gift from the Eruv-makers, which the Boundary's religious supervisory body can regard as a symbolic 'umbrella domain rental' signifying the authority's consent. Barnet Council has now met both requirements.)

(5) The Human Rights Bill will make it unlawful for a local authority "to act in a way which is incompatible with a Convention right" of the European Convention on Human Rights. The Council ought to consider whether it should accept this principle now. Implementation of planning permission for the stipulated siting of the poles could infringe Convention rights under Articles 8 and 9: the former by the Council empowering the 'hi-jack'; the latter by the Council failing to protect the right of Eruv non-believers to enjoy free and unobstructed passage in streets by not being subjected to the Eruv manifestation of compulsory passage through an Eruv 'gateway'.

We believe that the Council should revoke or modify the planning permission pending its full examination of the material planning considerations which it has hitherto neglected.

We would appreciate your comments,

Yours sincerely,



(Dr) Jeffrey J. Segall
on behalf of the Eruv Boundary Opponents Committee

Enc. (for information): Communication sent to the Members of the Development & Protection Committee prior to its approval of the Eruv4 planning application.

0114

12th June 1998

Riposte to Officers' Report on Planning Application for Eruv 4

We note that the Report addresses civil rights issues in response to objections, but we consider that the Officers ignore or misrepresent our key objections. Consequently we believe that if the Officers' recommendation to approve the Application is accepted, Barnet Council could breach its duties as the local planning and highways authority.

1. Key material planning consideration

(a) The Report fails to state that the poles are to be sited to leave a gap of no more than three handbreadths between them and their adjacent existing structure, as a religious stipulation, and that this stipulated siting is a material planning consideration.

(b) It also fails to state (8.1.6) that the purpose of this siting is to cause obstruction to free passage by creating impassable gaps at the rear of pavements.

2. Highways Act Section 137

Moreover, the Report fails to inform that these obstructions to free passage could amount to unlawful wilful obstruction because the specific intention of the impassable gaps is permanent obstruction: i.e. to complete the Eruv Boundary between the poles-and-wire 'gateways' and the designated existing Boundary structures. The obstructions would not be caused only on the day of the week for which a religious need is claimed, but on every day, allowing them to fulfil a territorial perception. (It is noteworthy that there are no poles-and-wire constructions in the Strasbourg and Amsterdam Eruvs, and few in American urban Eruvs.)

3. Highways Act Section 130, and European Convention Article 9

(a) The Officers continue to ignore the fact that the stipulated siting would compel everyone, when entering or leaving the Eruv area, to pass through one of the privately-owned religious symbolic gateways. Hence they do not consider that for some citizens this experience will deny them their right to enjoy their use of Barnet's highways.

(b) Article 9 of the European Human Rights Convention provides the right to protection from a manifestation of a religion or other belief which infringes any right of anyone else. The Officers' assertion (p20) regarding *the physical proximity ... denial of freedom of conscience* is not the issue. As secular humanists we will be offended in our streets by the Eruv Committee and by Barnet Council in the experience of being compelled to pass through the religious 'gateways'. We have some Christian neighbours who share such feelings. All people affronted in this way are entitled to protection. Moreover, if the Officers' statement (p20) that *to anyone else they* ['gateways'] *are simple poles and wires* is correct, the Council has the duty now to inform the public that the purpose of the apparently useless poles-and-wire constructions in their streets would be to allow passage through the Eruv Boundary.

4. Convention Article 8 and the Human Rights Bill

(a) The Officers' Report considers that the designation of the external walls of dwellinghouses with private land as existing Eruv Boundary is acceptable without the consent of the residents. Officials of the Lower Merion, Pennsylvania, Eruv obtained such consent, showing respect for the home. By this comparison, the Officers are showing disrespect for the home. Moreover, ancient Jewish law requires the consent of residents who are Eruv non-believers; by this criterion also, the Officers are showing disrespect for the home.

(b) If affected residents do not have a *right of veto* (8.2.4 p21) on this issue, the Development and Protection Committee does have this right. Yet the Officers have refused to accept this matter as :

material planning consideration. In doing so, they have deprived these residents of an open and democratic decision on whether planning permission should be required for the religious use of their residential buildings under the Planning (Use Class) Order. Thus the Officers caused previous Planning Committees to show disrespect for the home.

(c) Barnet Council proactively empowered the Eruv Committee to designate the walls of homes as Boundary, without the consent of the residents, by accepting (and refusing to return) a gift of £4000 from the Applicant, which is regarded by the latter's religious supervisory body as symbolically overriding the ancient religious requirement for individual consents.

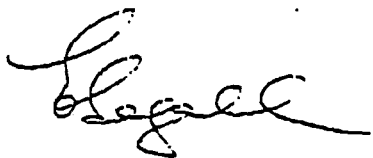
(d) The Officers' Report ignores that it is the absence of residents' or planning consent which infringes Article 8 of the European Human Rights Convention by showing disrespect for the home, and fails to note the provision in the Human Rights Bill that it will be "unlawful for a public authority to act in a way which is incompatible with a Convention right".

5. Race Relations Act, Section 19A

The Officers appear to misunderstand the relevance of Section 19A. The point is that only persons of one particular ethnicity could benefit from planning permission for this private 'development' in Barnet's streets; no person of another ethnicity could benefit from it; therefore planning permission for it would be discrimination.

The Officers' comments are irrelevant that non-orthodox Jews would not be discriminated against (8.3.4); that Jews as well as non-Jews would have *to pass through the poles* (8.3.4.2); that *the test of less favourable treatment is not a mere subjective one* (8.3.4.3), because in this case, the absence of any benefit to people of another ethnicity is not subjective, but a fact.

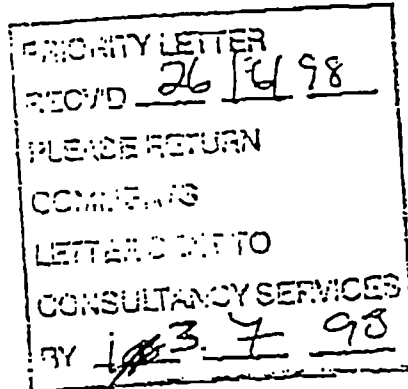
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*John Koster
Highways*

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24 June 1998

Dear Anne,

Re: Eruv

A group from the Church End LA21 Partnership will be petitioning the Public Works Committee in reference to the positioning of the poles to be placed on the bridge at Finchley Central.

As you know this is a very narrow footpath on both sides and there is concern for pedestrian safety, if, from what I can gather, they stay in the proposed spot. They will more than likely put forward a proposal for their re-positioning. Can you contact Janett Durrant, the Church End co-ordinator.

Yours sincerely,

Kathy McGuirk

Cllr. Kathy McGuirk
Chair Church End Partnership

c.c
Cllr. Stan Cross
Cllr. Geof Cooke
Grahame Beattie
George Sims
Janett Durrant

HIGHWAYS MAINTENANCE UNIT
RECEIVED 29 JUN 1998
ISSUED TO
ACTION