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The Planning Department
London Borough of Barnet
1255 High Road
London N20 0EJ

CT/CAC

Dear Sir/Madam,

We urge Barnet Council's Town Planning and Research Committee to reject the Second Application of the United Synagogue Eruv Committee, on the grounds of:

- (A) The reasons given by the Committee for rejecting the First Application
- (B) The objections stated in our letter of 2 January 1993 in the consultation process on the First Application
- (C) The refusal of the Public Works Committee to grant a licence for Eruv wires as proposed in the Second Application (5 October 1993)
- (D) The following legal and ethical considerations:-

1. Flawed application and procedure

1.1 The Applicant ticked 'No' to the question "Are there any trees on or adjoining the site?" Yet at some sites, such as along Wildwood Road, there are trees adjoining the pavement, and some of the foliage extends to the sites of the proposed poles/posts and wires. Moreover, according to the Eruv Manual by Bertram Millar (a copy of which is deposited with the Council), this could cause a religious need to cut away tree branches and leaves. The Eruv Committee has not stated whether or not this need could apply to their proposal.

1.2 The Application is made under the Town and Country Planning Act 1990 which deals with 'land'. This is defined as any 'corporeal hereditament' and so excludes public highways (footways, roadways, etc). Permission for the erection of Eruv poles on the highways, as well as the wires over them, cannot therefore be given under the Town and Country Planning Act. Implementation of the proposal would require permission under Part VIIA (Provision of amenities on certain highways) of the Highways Act 1980. The Department of Transport has pointed out that there is "no nexus" between the two Acts.

1.3 Under the Highways Act objectors who would be directly affected by implementation of the proposal have more rights than have been recognised hitherto by the Council.

2. Rights of objectors under the Highways Act

2.1 Part VIIA of the Act requires the Council to consider the purpose of a proposal, not only structures and their siting. The purpose of Eruv poles and wires is to link frontages of private property and other existing structures in order to define an Eruv Boundary within which the footways would be a 'recreational facility' for a section of the public.

2.2 Owners and occupiers of premises forming the Boundary ('frontagers') have an interest in the adjoining part of the footway with respect to the erection of Eruv poles on it and/or its use as a recreational facility. Their consent could be required under the Act because implementation of the proposal could "result in the production of income", apparently to meet insurance and maintenance costs of the poles and wires.

2.3 All owners and occupiers "likely to be materially affected" by the proposal would be entitled to receive the Council's consultation notice.

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3. Common law rights of landowner-frontagers

3.1 In common law "there is a general presumption that the owner of land adjoining a highway is the owner also of the soil of one half of the highway" and that "apart from statutory authority, the owner's consent is necessary before other persons interfere with it". Such interference would be inevitable in the erection of the poles; in case-law "a licence from the local authority to the trespasser is no answer".

3.2 "...being also the owner of the air above it, may restrain the erection of wires above the highway."

4. The use of frontages without consent

4.1 We believe that the presumption of the Eruv Committee in proposing to use the frontages of private property to define part of the proposed Eruv Boundary, without the consent of the owners, is contrary to natural law ("unchanging moral principles common to all people by virtue of their nature as human beings", C.O.D.). It is noteworthy that the organisers of the Philadelphia Eruv obtained such consent.

4.2 We have requested the Court of the Chief Rabbi to comment on this use of frontages, without consent, according to Jewish law and ethics. If our view is accepted by the Court, the proposed Eruv could be invalid in religious terms.

4.3 The use of the frontages of homes without consent is also dependent on the Council's permission for the erection of the poles and wires. We contend that such permission could put the UK in breach of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states: "Everyone has the right to respect for his private and family life, his home and his correspondence".

Yours sincerely,

