

Appeal Decision

Site visit made on 22 February 2017

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 April 2017

Appeal Ref: APP/T5720/C/16/3156138

Land on the south side of Wyke Road, Raynes Park SW20 8NH (HM Land Registry title number SGL471634)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Capital Cars against an enforcement notice issued by the Council of the London Borough of Merton.
 - The enforcement notice was issued on 4 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change in the use of the land for car parking.
 - The requirements of the notice are to completely and permanently cease the use of the land for car parking.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (a)

Main Issue

2. Taking together the reasons given for issuing the notice and the Council's Appeal Statement, the main issues are the effect on the Council's strategy for nature conservation and the effect of the development on existing conditions of highway safety along Wyke Road.

Reasons

Nature conservation

3. The appeal site comprises a narrow strip of land lining the southern side of Wyke Road. It is separated from the railway embankment to the south by tall chain link fencing. To the western end and extending eastwards to the beginning of Langham Court opposite, the strip of land has been cleared of vegetation, provided with a loose stone surface and is used for parking with no formal layout. Cars have to mount the kerb and are parked at right angles to the highway or, where the width of the land narrows, at an angle to the highway.
 4. The ecological assessment commissioned for the Appellant after the site was cleared and the current use began says, with reference to Google Street View May 2012, that the site formerly supported ruderal vegetation prior to its clearance and provision with a gravel surface. Such species are those which
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grow in waste places or amongst rubbish. In addition it was likely to have supported areas of scattered scrub and brambles. Although I have not been provided with the street view evidence, the description seems to me commensurate with the scrub like vegetation that I saw characterises the railway embankment and land adjoining to the east.

5. Far from being considered lacking in value, the appeal site and railway embankment and are included as part of a designated Site of Importance for Nature Conservation (SINC), a locally important site of nature conservation in the adopted Development Plan for the area. It also forms part of a designated Green Corridor.
6. Policy 7.19.E of the London Plan sets out a hierarchy for proposals which affect directly, indirectly or cumulatively a site of recognised conservation interest by firstly avoiding adverse impact to the biodiversity interest, secondly minimising impact and seeking mitigation, and only exceptionally seeking appropriate compensation where the benefits clearly outweigh the biodiversity impacts.
7. Policy CS13.g.2 of the Council's Core Strategy encourages new green links, green corridors and islands to seek to reduce areas of deficiency in nature conservation and to create safe species movement and havens for nature. Policy CS13.g.4 requires development proposals likely to affect SINCs to demonstrate that such development will not adversely affect the nature conservation value of the site.
8. Policy DM O2 of the Council's Sites and Policies Plan builds on CS13 aiming to protect and enhance biodiversity, particularly on sites of recognised conservation interest. All such sites and the green corridors linking them will be protected and wherever possible measures that enhance their conservation value secured. Development destroying or impairing the integrity of green corridors will not be permitted.
9. I do not doubt that, in isolation, that part of the appeal site now used for parking site supported ecological features of low value. However the Appellant's own ecological assessment recognised that it had the potential to provide a nesting habitat for the local bird population, foraging and food plants for invertebrates, and resting and feeding areas for hedgehogs (a BAP priority species). It also formed an undisturbed outer edge to the SINC. In its current state it is cleared of vegetation and used for an intrusive, disturbing activity so any value that it formerly had has been destroyed.
10. The development that has been carried out and which is attacked by the notice has not sought in any way to avoid impact on biodiversity or to protect any nature conservation value that the site might have had. The Appellant points out that the loss of the area represents only 0.5% of the SINC and that tall ruderal vegetation is a ubiquitous habitat. However, much of the SINC, as at this location, comprises a narrow band of vegetation fringing the railway line and contributing to a continuous natural corridor within the built up urban area – maintaining its width is thus of importance.
11. The ecological assessment says the northern Railside habitat is reduced by 5.5m to 7.5m along a 70m length of the corridor. I consider this a substantial reduction in the width of the SINC at this location. The use of the appeal land for parking, stripped of vegetation, has diminished the positive contribution of this section of the SINC to the integrity of the whole and has eroded its role in functioning as a green corridor.

12. The development as carried out is in conflict with the provisions of the Development Plan. The land has been included in a designated SINC and green corridor so as to provide it with appropriate protection. In failing to do so there is conflict with policies CS13 and DM O2 and in particular with the requirements to protect or enhance biodiversity; and not to impair the integrity of the green corridor.
13. The Appellant has advanced a scheme of mitigation suggesting that this might be secured by way of conditions. Starting at the eastern end of the parking area and moving in a westerly direction there would be a line of 8 parking spaces followed by an 11.35m strip of soft landscaping, another line of 3 disabled spaces and a further 15.25m length of soft landscaping. The landscape strips would accommodate a raised bank seeded to attract invertebrates such as bees and managed in perpetuity as bee banks. In addition the Appellant intends to plant native climbers to cover the Railtrack security fence and to attach to it 3 bird boxes. A continuous footway some 1.2m wide would be provided adjoining the carriageway.
14. The dimensioned drawing shows the parking spaces and planting strips to have a consistent depth of 5m which together with the footway would require a total depth of 6.2m for the entire length of the scheme. The appeal site, however, reduces in depth significantly towards the western end. There is insufficient depth to implement the scheme as depicted.
15. Even if there had been sufficient land to implement the scheme illustrated, the mitigation measures are inadequate, to my mind, to justify the loss of vegetation and the introduction of an intrusive activity into a previously undisturbed strip of land forming an integral part of the SINC and green corridor.
16. Notwithstanding that the northern part of the corridor is flanked on one side by the railway and on the other by Wyke Road, the additional activity of cars associated with the garage entering and leaving parking spaces is likely to be disturbing to wildlife not only in the area actually used for parking but also on adjoining land both within the site and on the railway embankment. The parking rows of 20m and 9.3m respectively will be stripped of all vegetation for the full depth of the site other than for some climbers which the Appellant proposes for the Railtrack fence. The two landscaped "bee banks", one (if not both) of a lesser depth than depicted would not compensate for the loss of those areas to car parking. The 3 bird boxes, again proposed to be affixed to the Railtrack fence, are not in my view sufficient to mitigate the interruption of a previously continuous undisturbed strip offering a natural habitat and refuge for birds and other creatures.
17. Applying the hierarchy set out in policy 7.19.E of the London Plan, I find the scheme submitted would not minimise the impact on the biodiversity interest of the SINC and green corridor nor would the harm be adequately mitigated. I have taken into account the stated need for parking in connection with the car repair garage but saw that there are a limited number of spaces available on the forecourt of that premises. I do not doubt that there is a demand for more. But that need and the fact that the alternative of parking on-street will be in competition with other road users is not a benefit that clearly outweighs the biodiversity impact, as required, so as to be exceptional and to warrant the grant of permission.

18. On the first main issue I find that the use of the land for car parking conflicts with the policies of the Development Plan aimed at protecting and enhancing the designated SINC and green corridor. I further find that, even taking into account the reduction in the amount of parking and the mitigation proposed, that there is nothing sufficient to indicate that a decision should be taken otherwise than in accordance with the Development Plan. If permission was allowed in this instance without exceptional justification, the development would seriously undermine the Council's strategy for nature conservation.

Highway safety

19. As currently arranged, there is a continuous line of parked vehicles at right angles, or at an angle, to the road. An existing footway runs between the parked vehicles and the carriageway for part of that length. In ordinary circumstances, a pedestrian, cyclist or car driver using a public highway would be aware of a defined access and be alive the possibility of vehicles entering or emerging from it. In the current arrangement, however, any one of the parked cars could move off the site along the full stretch used for parking which presents a significant hazard for other road users. Moreover, from the pattern of parking taking place at the time of my visit it was evident that drivers of many of the parked vehicles would not be able to see approaching pedestrians, cyclists or other vehicles before moving off.
20. The Appellant says the mitigation scheme would enhance road safety by including a new path where one does not exist. I have already noted that there is insufficient depth to implement the scheme as dimensioned. But even if that were not so, for the reasons set out above I consider that a continuous line of 8 parked cars and another of 3 immediately adjoining the back edge of the footway would present an unacceptable hazard for pedestrians.
21. On the second issue, I conclude that the use of the land for parking currently has a harmful effect on existing conditions of highway safety and that this would not be overcome by the Appellant's revised scheme. The development conflicts with Core Strategy policy CS 20 and in particular with the requirement in d that developments should not affect safety.

Conclusion ground (a)

22. For the reasons given the appeal on ground (a) fails.

The appeal on ground (g)

23. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. One month is given and the Appellant asks for six. The steps to be taken simply require the use for parking to cease. Removal of the parked cars could be achieved within a day and thus I consider one month an entirely reasonable period within which to comply with the notice. This is especially so given that the garage operated in the past without this parking being available and that there are some parking spaces for use on its forecourt.
24. The appeal on ground (g) fails.

B M Campbell

Inspector