

Case Name: *Malvern Hills District Council v The Secretary of State for Housing, Communities And Local Government & Anor* [2021] EWHC 129 (Admin) (27 January 2021)

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Commentary: Malvern Hills District Council (“the Council”) appealed against the decision of a planning inspector appointed by the Secretary of State (“the Inspector”) to grant planning permission for the erection of a storage shed to house an ex-British Railways steam operated crane ADRS 95000 (“the seam crane”). The steam crane is of considerable heritage interest and used for demonstrations at the Welland Steam and Country Rally (“the rally”).

The Council appealed on three grounds and all three grounds were dismissed.

Paragraph 98 of the NPPF states that: “Planning policies and decisions should protect and enhance public rights of way and access taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.” The building was erected across the route of a public footpath and the Council’s first ground of appeal was that the Inspector erred in failing to treat the blocking of a public footpath as a material consideration.

On behalf of the Secretary of State, Mr Charles Streeten submitted that, on a fair reading the Inspector’s decision, it was clear that the Inspector came to his decision in the full knowledge that the development had been erected across a public footpath and in doing so the Inspector had applied paragraph 98 of the NPPF. Mr Streeten used the decision in *Suffolk Coastal District Council v Hopkins Homes Ltd* [2017] 1 WLR 1865 to support his submission that the court should respect the Inspector’s expertise and start at least from the presumption that he will have understood the policy framework correctly. Steyn J agreed with Mr Streeten’s submissions that the Inspector had, in substance, applied paragraph 98 of the NPPF and that no express reference to paragraph 98 of the NPPF was required in the Inspector’s decision, and dismissed the first ground.

Policy SWDP 34 of the South Worcestershire Development Plan provides that proposals for the expansion and development of tourism potential will be permitted on greenfield land where consideration has been given to the availability of alternative brownfield sites, amongst other criteria. The Council’s second ground was that the Inspector misinterpreted and misapplied Policy SWDP 34 by failing to consider whether brownfield sites were available for the storage of the steam crane before determining that the greenfield site was appropriate.

Steyn J held that the Inspector “...was entitled to reach a decision on the evidence presented to him, applying his planning judgement and common sense”. Following *Holgate J’s* analysis in *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2016] EWHC 3028 (Admin), in which he said that “...a claimant must not dress up what is in reality a criticism of the application of policy as if it were a misinterpretation of policy”, Steyn J concluded that the Council’s real complaint was with the misapplication of Policy SWDP 34. Applying the

principle established in *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983, that challenges to the misapplication of policy can only be made on grounds of irrationality, and concluding that no irrationality was established, Steyn J dismissed the second ground.

The Council's third ground was that the Inspector reached conclusions about the lack of alternative storage options for the crane without any evidence, and acted unfairly and in breach of natural justice by failing to accord the Council an opportunity to respond to conclusions that the Council submits were based on speculation.

Agreeing with the Secretary of State's submissions, that the feasibility of storing the steam crane off site and transporting it to and from the rally, and the availability of alternative storage, were squarely before the Inspector, Steyn J also dismissed the third and final ground

Case summary prepared by Nikita Sellers