



Neutral Citation Number: [2021] EWHC 129 (Admin)

Case No: CO/1386/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT (BIRMINGHAM)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27/01/2021

Before :

**THE HONOURABLE MRS JUSTICE STEYN DBE**

Between :

**MALVERN HILLS DISTRICT COUNCIL**  
**- and -**  
**THE SECRETARY OF STATE FOR HOUSING,**  
**COMMUNITIES AND LOCAL GOVERNMENT**  
**-and-**  
**ROSS-ON-WYE STEAM ENGINE SOCIETY**  
**LIMITED**

**Claimant**

**Defendants**

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**Mr Timothy Jones** (instructed by **Malvern Hills District Council**) for the **Claimant**  
**Mr Charles Streeten** (instructed by **Government Legal Department**) for the **First Defendant**  
The **Second Defendant** did not appear and was not represented

Hearing date: 15 December 2020

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**Approved Judgment**

**Mrs Justice Steyn :**

**A. Introduction**

1. On 6 March 2020, a planning inspector appointed by the Secretary of State (“the Inspector”), granted planning permission for the erection of a storage shed to house an ex-British Railways steam operated crane ADRS 95000 (“the steam crane”), following an appeal by Ross-on-Wye Steam Engine Society (“the Society”) against an enforcement notice served against it by Malvern Hills District Council (“the Council”). The steam crane is of considerable heritage interest. The Society keep it in working order and use it for demonstrations at the Welland Steam and Country Rally.
2. The Council appeals pursuant to s.289 of the Town and Country Planning Act 1990 against the Inspector’s decision. Permission to appeal on three grounds was granted by HHJ Worster (sitting as a judge of the High Court) on 13 August 2020. I am grateful to Mr Timothy Jones and Mr Charles Streeten, who represented the Council and the Secretary of State, respectively, for their clear and concise written and oral submissions. The Society did not participate in this appeal.

**B. The Background**

3. The appeal site (“the Site”) lies outside of any settlement boundary as defined in the adopted Development Plan and is in the open countryside. The building which is the subject of the appeal was erected in July 2018 without planning permission. Following three applications (two of which were withdrawn), on 11 July 2019 the Council refused planning permission to retain the building. The Council gave these reasons:

“Within the rural context, planning policy requires local authorities to support sustainable rural tourism and leisure developments that benefit rural businesses and communities. In this instance it is accepted that the Welland Steam and Country Rally is a long established local event. However, whilst it is accepted that the building has the appearance of an agricultural building it is considered that by virtue of its isolated location, scale, height, massing and prominence the building results in a significantly harmful encroachment into the open countryside that would be detrimental to the landscape character and visual amenity of the area. Furthermore, whilst the storage of the railway crane on site may be convenient to the operators of the event, it is considered that the applicants have failed to successfully demonstrate why the railway crane should be stored on site all year round and not simply brought to site for the duration of the steam rally. Further to this, insufficient justification has been provided to demonstrate that there is a clear functional agricultural need for the building to justify development in the open countryside to comply with Policy SWDP3c. The proposal is therefore contrary to the provisions of Policies SWDP2, SWDP 21, SWDP 25 and SWDP34 of the South Worcestershire Development Plan and paragraphs 83, 124 and 127 of the Framework.”

4. On 2 August 2019, the Council issued an enforcement notice, requiring (primarily) the demolition of the building within 3 months. The reasons given for the enforcement notice at (iv), (v) and (vi) are in almost identical terms to the reasons given for refusal of planning permission (quoted immediately above), excluding the alleged lack of agricultural need.
5. No reference was made in either the refusal of planning permission or the enforcement notice to the impact of the building on any public right of way.
6. The Society appealed against the enforcement notice pursuant to s.174(2)(a) of the 1990 Act, on the basis that planning permission ought to be granted, and (in the alternative) pursuant to 174(2)(g), submitting that the period of three months to comply with the notice fell short of what should reasonably be allowed. The Society's statement of case addressed the impact of the building on the landscape character and visual amenity of the area; the justification of the use of the building for storage of the steam crane; and the justification of the agricultural need for the building.
7. The Society stated:

“3.13 During the year 2000 a section of track was laid immediately to the west of the current location of the building, subject of the EN, and in 2004 the [Society] (which runs the Welland Steam and Country Rally) purchased [the steam crane] from British Rail and brought it to Woodside Farm, where it was placed on the section of track.

3.14 ... planning permissions were granted for a separate, longer length of track, to the west of the appeal site upon which the Welland Steam Rally operates a steam train during the yearly event. This use of the section of track was limited to the display and operation of trains and other rolling stock for not more than 28 days in a calendar year...

3.15 The building, subject of this appeal was erected in July 2018 to the east of the short section of track (some 60m) upon which the steam crane] has been stored and then displayed during the yearly Rally. Given the scale of the Crane and the significant challenges in moving the object it has not left this section of track since being brought to site in 2004. ...”

8. In the context of the appeal pursuant to subsection (g), the Society stated:

“3.30 The [steam crane] is a heritage asset whose condition has deteriorated since being brought onto site, prior to 2005. The machine requires specialised haulage as it is track-mounted, and long-term dry secure storage if the asset is to be preserved. Suitable arrangements will need to be in place prior to the removal of the building which will result in the continued deterioration of the heritage asset.

3.31 3 months is not long enough to secure appropriate alternative storage of the steam crane and therefore a period of 12 months to remove the building, in compliance with the EN, is requested in the event that planning permission is not granted under Ground A of this appeal.”

9. The Society submitted expert evidence from Mr Parker, the Director of a company which has been involved in historic railway preservation for over 30 years, who said that:

“II. CONCLUSION

The crane that is the subject of this report is an object of considerable engineering and historic interest. Whereas once steam cranes had a dominant role ranging from railway breakdowns and accidents and bridge work to unloading goods, they have now been totally superseded by modern hydraulic cranes. Just as goods were once mostly carried by rail, now most are carried by truck, many of which carry their own cranes.

Thus it represents the final development of steam technology: it may indeed be the last of such cranes built in Britain to survive, as we have been unable to find another of more recent date. Thus it is undoubtedly worthy of preservation in its own right.

The nature of such equipment, which is almost entirely steel, requires it to be kept indoors if it is to be preserved. Although in continuous use the heat and oil largely protected them against decay, when out of use they are subject to rust, damage and even vandalism, and thus if they are to be preserved must be housed indoors.

...

V. HISTORIC SIGNIFICANCE & REQUIREMENT FOR STORAGE

This may be the last-built steam crane surviving in Britain of a type that once numbered hundreds in this country and thousands world-wide, and of which perhaps a dozen still exist here. ...

This example has survived over 60 years in the open, but its continued existence is threatened if it is not housed under cover. When it was in daily use the warmth of the boiler and daily attentions of the crew would ensure it could resist the elements, but decades of exposure have already damaged the external cladding and threaten the rest. If it is not kept indoors there is little prospect of its long-term survival: the basic

structure is strong enough to resist corrosion but who is going to care about a rusty hulk?

...

This is the final version of a machine that arose from and contributed to the industrial revolution that helped form the Britain that we know. If it is to be preserved it must be kept under cover.

...

[The steam crane is] undoubtedly of engineering and historic interest. While not ‘famous’ like *Flying Scotsman* it is emblematic of the day-to-day role that steam power played in the United Kingdom and elsewhere. Just as history is less and less about Kings and Queens and more about the common man, the same applies to engineering artefacts. Unsung objects like this literally did the ‘heavy lifting’.

10. A supporting statement provided by Land Development and Planning Consultants Ltd stated:

“4.1 The Steam and Country Rally event has run annually from the 50 hectares at Woodside Farm Welland for 26 years, having run for the previous 7 years at Upton on Severn. Average annual attendance is 30,000 people excluding exhibitors who come to stay in the area during the event. Local businesses see a dramatic increase in footfall and bookings, and some local enterprises operate stalls within the event site. ...

4.2 The event is only made possible by the enthusiasm and hard work of the event organisers, who now make this application. It is their personal enthusiasm for vintage machinery that led to the crane (currently stored within the building) being saved from decomposition in a scrap yard in the Forest of Dean. Having been brought to the site they were unable to house the crane and so the decision was taken to construct a shelter to protect the machine from further decay. It goes to the heart of the Steam Rally ethic that they have sought to preserve this remnant of the Forest’s mining heritage for future generations to enjoy as part of the annual rally where it is displayed working alongside the steam powered sawmill.”

11. The Council’s statement of case acknowledged that the “*Steam and Country Rally has run annually from the site for 26 years making an important contribution to the local economy for the duration of the event*”. But the Council maintained its assessment that the development is not compatible with the character of the area. The Council observed:

“5.3.7 It is not uncommon for steam locomotives to be transported by road to sites around the country when required. Furthermore, carriage by road transporter is regularly used by the owners of traction engines when visiting fairs and rallies. Whilst the storage of the railway crane on site may be convenient to the operators of the event, the appellants have failed to demonstrate why the railway crane cannot be stored off site (as would be the case for other rolling stock used during the rally) and brought to site for the duration of the steam rally.”

12. The Council resisted the appeal pursuant to s.174(2)(g) on the basis that the steam crane appeared to have been stored in the open for at least 15 years; it was “*unclear why it now, after all this time, requires storage within a building*”; the enforcement notice required the building, not the steam crane, to be removed; and the Council considered it unlikely that the Society intended to remove the steam crane from the site in the near future.
13. The Council’s statement of case also noted that the “*building has been located on the definitive line of Welland footpath WD-507 which crosses the site*” and identified the impact on the public right of way as one of the two main issues on the appeal, the other being the policy and principle of development. The Council stated:

“5.4.1 The definitive line of Welland footpath WD-507 is affected by this proposal, and passes through the building. This would require a diversion should planning permission be granted.

5.4.2 Notwithstanding the Council’s view that the development is wholly unacceptable, should the inspector be mindful to grant the Ground A appeal it understands that as it is retrospective a condition cannot be imposed requiring an application to be made to divert the PROW.

5.4.3 Worcestershire County Council have advised that they would object to the appellants being granted planning permission for the alleged breach due to the building having been constructed across the definitive legal line of Welland footpath WD-507.”

14. In relation to the public right of way, the Society’s supporting statement said:

“4.4 The previous submissions raised objections to the PROW whose route is conflicted by the building; the revised scheme demonstrates that the users of the footpath can be provided with an equally convenient alternative route, which will form the basis of a footpath diversion order should planning permission be granted.”

**C. The Inspector’s decision**

15. The Inspector, Stephen Hawkins, issued his decision allowing the appeal on 6 March 2020, having made a site visit on 25 February 2020. The Inspector identified the main issue as *“the effect of the building on the character and appearance of the countryside”*.
16. The Inspector noted that the appeal site consists of an *“extensive area of open pasture land”* which is used for farming and to hold the Welland Steam Country Rally, *“an established annual event which takes place over a weekend in July”*. *“The appeal building has been erected towards the middle of the site.”* The steam crane, which *“is used for lifting demonstrations during the rally”*, *“is currently kept in the main part of the building”*.
17. The Inspector found *“the building has a form and appearance not dissimilar to that of a modern farm structure”* and it *“has quite modest proportions when compared with those of many contemporary farming structures”*.
18. The Inspector found:

“6. For the most part, the building is seen from public footpaths Welland WD 507 and WD 512 which traverse parts of the site, although there are also views from the B4208 to the west. As other public views of the building are limited, its visual impact could therefore reasonably be described as relatively localised. The building is generally seen as sitting well below the skyline, against a backdrop of rising land, close to a mature hedge. These factors, together with the relatively modest proportions of the building, the predominantly dark, recessive external finishes and its rural appearance, have all assisted significantly in assimilating the built form into the landscape, such that open land still largely dominates the setting. As a result, the building is neither prominent nor perceived as an alien feature in the surrounding countryside. Given the above factors, the building has not significantly eroded the predominantly open, pastoral characteristics of the local landscape.
19. Having noted that the pre-existing structures on the site were lawful in planning terms, *“form an appreciable part of the foreground and backdrop”*, and that the *“building appears closely related to several of the structures”*, the Inspector continued:

“9. Therefore, the building has not caused unacceptable harm to the character and appearance of the surrounding countryside. It follows that the building accords with criterion in Policy SWDP 2 of the South Worcestershire Development Plan (LP), as the open countryside is safeguarded. The building also accords with LP Policy SWDP 21, as it integrates effectively with the surroundings in terms of form and function, reflects the site characteristics and complements the character of the area. There is also accordance with criteria in LP Policy SWDP 25, as the LCA and its guidelines have been taken into account and the building is appropriate to and integrates with the

character of the landscape setting. Additionally, the building accords with criterion in Policy SWDP 34, as it is compatible with the physical character of the area.

10. There is no requirement in LP Policy SWDP 34 or the other LP policies referred to above for tourism development to be justified. In any event, at paragraph 83 the National Planning Policy Framework (the Framework) supports sustainable rural tourism and leisure development where, as in this case, the character of the countryside is respected. I am given to understand that the crane was built in the mid-1950s and might well be the last surviving example of its type in existence. Therefore, this crane is of considerable heritage interest. Also, I understand that whilst the crane is currently in working order, it has deteriorated significantly due to being kept in the open over many years and unless stored undercover, the prospects for its long-term survival are limited. It might be possible for the crane to be transported to the site for the duration of the rally, in a similar manner to a locomotive or traction engine. However, given the crane's significant size this might well pose the owners, who are most likely volunteers, considerable difficulties in terms of transport, not least the probable associated costs. Moreover, as railway heritage sites invariably keep most rolling stock in the open, I am not convinced that there would be covered storage readily available elsewhere.

11. Therefore, erection of the building has assisted, albeit to a modest degree, in sustaining the tourism and leisure benefit afforded by the rally to the surrounding area and is consistent with the Framework paragraph 83. Furthermore, as a well-designed place has been achieved there is no inconsistency with the Framework paragraphs 124 and 127.

*Other matters*

12. The building has been erected across the route of the public footpath Welland WD 507. Worcestershire County Council have therefore objected to planning permission being granted. However, that is not a material factor in considering the planning merits of the building. Granting planning permission does not of itself authorise the obstruction of a public right of way. The procedures in the Highways Act 1980 should be followed to determine whether the footpath can be diverted."

**D. Ground 1: Alleged error in respect of the blocking of the public footpath**

*The ground*

20. The building has been erected across the route of a public footpath. The National Planning Policy Framework ("NPPF") "*is a material consideration in planning decisions*" (NPPF, §2). NPPF §98 states:



“Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.”

21. The first ground of appeal is that the Inspector erred in failing to treat the blocking of a public footpath as a material consideration.

*The parties' submissions*

22. Mr Jones submits that the Inspector failed to follow the clear and unequivocal central government guidance provided in NPPF §98 without giving any reason for departing from it. He referred to *R (Lochailort Investments Ltd) v Mendip District Council* [2020] EWCA Civ 1259 at [6] and [33] for the proposition that a planning decision which fails to comply with the NPPF is not automatically rendered unlawful, but any departure from the NPPF must be reasoned.
23. The Inspector recorded the fact that the building blocked the public right of way, but Mr Jones contends that recording a decision that it is not a material consideration is the opposite of treating it as a material consideration. A right of way is not protected if it is blocked.
24. Mr Streeten submits that the Council's argument mischaracterises the Inspector's decision. On a fair reading, §§6 and 12 of the decision (quoted in §§18 and 19 above) show that the Inspector expressly considered the impact of the developments upon footpaths WD507 and WD512, in the full knowledge that the development had been erected across the footpath of WD507. In doing so, the Inspector applied NPPF §98.
25. Mr Streeten draws attention to the judgment of Lord Carnwath JSC in *Suffolk Coastal District Council v Hopkins Homes Ltd* [2017] 1 WLR 1865 at §25 in support of 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. No express reference to NPPF §98 was required, not least because it was nowhere referred to in the Council's reasons for issuing the enforcement notice or any of the submissions made by the Council in response to the appeal.

*Analysis*

26. The Inspector made no error of law in addressing the fact that the building has been erected across the route of the public footpath Welland WD 507. He expressly referred to that fact: there is no suggestion that he was unaware of it or overlooked it. In my judgment, the Secretary of State is correct to say that the Inspector was not saying (in §12 of his decision) that the fact that the building was erected across the public footpath was immaterial in determining whether to grant planning permission, only (and correctly) that it was not a material factor in considering the planning merits of the building itself.
27. The Inspector determined, from the viewpoints of users of the footpaths, that the building integrates effectively with the surroundings and with the character and

appearance of the surrounding countryside and landscape. He described the placement of the building as “*well-designed*”.

28. I agree with the Secretary of State’s submission that on a fair reading of the decision, taking into account the Inspector’s expertise, it is apparent that the Inspector has, in substance, applied NPPF §98.
29. The Society’s evidence was that “*the users of the footpath can be provided with an equally convenient alternative route*” and there was no evidence before the Inspector to the contrary. The Inspector rightly recognised that the question whether to divert the footpath would need to be determined on an application made in accordance with the Highways Act 1990. As he said, the grant of planning permission does not authorise the obstruction of the footpath by the building.
30. The Inspector did not fail to treat the need to protect public footpaths as a material consideration. If the footpath can be diverted to an equally convenient alternative route, which seems likely given that it is a 50ha site of primarily grassland, the public right of way will have been protected. On the other hand, if on an application to divert the footpath it were to be concluded that there is no equally convenient alternative and the footpath should not be diverted, then (notwithstanding the grant of planning permission) action could be taken to require the removal of the obstruction: s.137 and 137ZA of the Highways Act 1980.
31. Accordingly, I reject the first ground of appeal.

**E. Ground 2: Alleged failure to consider greenfield sites**

*The ground*

32. LP Policy SWDP 34 provides:

“Proposals for the expansion and development of the tourism potential of south Worcestershire (excluding visitor accommodation – see SWDP 35) will be permitted where the following criteria are met:

- i. The development is compatible with the physical character of the area.
- ii. The significance of heritage assts and their setting is conserved and, where appropriate, enhanced.
- iii. The public enjoyment and understanding of the historic and natural environment is promoted.
- iv. Where schemes are proposed on greenfield land, consideration has been given to the availability of alternative brownfield sites.
- v. Appropriate provision is made for access and vehicular parking facilities (including coach parks, where appropriate).

vi. The site is readily and safely accessible by means of transport other than the private car.”

33. The Council’s second ground is that the Inspector misread SWDP 34. Each criterion must be met. Criterion (iv) means that before greenfield land is developed, consideration must be given to the availability of alternative brownfield sites. The Council contends that the Inspector fell into error by failing to recognise that no such consideration had been given.

*The parties’ submissions*

34. In his skeleton argument, Mr Jones put this ground in two ways. First, the Inspector failed to have regard to material considerations, namely, (i) SWDP 34, criterion (iv) and (ii) the Society’s failure to consider alternative brownfield sites. Secondly, the Inspector misinterpreted SWDP 34, failing to recognise that the policy seeks to protect greenfield sites and criterion (iv) requires consideration of the availability of brownfield sites.
35. However, in oral submissions he accepted that this ground was probably a complaint of misapplication rather than misinterpretation of policy. Mr Jones submits that there should have been consideration of brownfield sites and it was for the applicant, not the Council, to undertake that consideration. He acknowledges that there is no burden of proof on either side, but submits that in accordance with the principle of fairness it was for the Society to show that it had considered brownfield sites.
36. If there was evidence, then the Inspector’s assessment would be a question of planning judgment, but it was not because there was no evidence. There is no reason to believe that there would not be a brownfield storage facility capable of storing the steam crane. In their appeal pursuant to s.174(2)(g), the Society submitted they would need 12 months to remove the steam crane, not that there was nowhere else they could store it. If that were the position, they could be expected to have said so.
37. Mr Streeten submits that this is an attempt to reargue the planning merits. The Inspector had regard to SWDP 34, to which he expressly referred in §9. There is no basis for suggesting that the Inspector misunderstood the policy. The Inspector’s reference to SWDP 34 is a strong indication that he took all the elements of the policy into account. The policy is not complex, and it should be presumed, applying *Hopkins Homes*, that the Inspector understood it. The Inspector addressed the question of alternatives in the decision at §10, noting the problems associated with transporting the steam crane to and from the site and the absence of covered storage “readily available elsewhere”. Finally, Mr Streeten submits that the Council has not raised a genuine case of misinterpretation, rather the complaint is concerned with application, which falls to be assessed by reference to the standard of rationality.

*Analysis*

38. I reject the contention that the Inspector failed to have regard to SWDP 34. He referred to it expressly in §9 of his decision and he addressed the possibility of the steam crane being stored on an alternative site in §10. SWDP 34 is not a lengthy or complex provision. The Inspector’s express reference to it provides a strong

indication that he took the whole provision into account and there is nothing in the decision that leads to a contrary conclusion.

39. I also reject the Council's submission that the Inspector misinterpreted SWDP 34. In *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2016] EWHC 3028 (Admin), [2017] PTSR 408 at §§83-84 Holgate J said:

“... Assuming that the LPA has had regard to relevant NPPF policies, where that material does not reveal any *misinterpretation* of the NPPF, the only challenge that could be pursued would be to the LPA's judgment when *applying* that national policy. Such a challenge may only be made on grounds of irrationality (*Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983). Because of the critical difference between these two types of challenge as to the juridical basis upon which a court may intervene, 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.

Normally a claimant fails to raise a genuine case of *misinterpretation* unless he identifies (i) the policy wording said to have been misinterpreted, (ii) the interpretation of that language adopted by the decision-maker and (iii) how that interpretation departs from the correct interpretation of the policy wording in question. A failure by the claimant to address these points, as in the present case, is likely to indicate that the complaint is really concerned with *application*, rather than *misinterpretation*, of policy.” (Original emphasis)

40. The Council has addressed point (i) by identifying criterion (iv) in SWDP 34, but point (ii) and (iii) have not been met. The real complaint is that the Inspector *misapplied* 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.
41. The Inspector is a specialist tribunal. He was entitled to reach a decision on the evidence presented to him, applying his planning judgement and common sense. The evidence was that the steam crane had been in the open for “*over 60 years*” (see §9 above). It had been saved from decomposition in a scrap yard by the enthusiasm of members of the Society who had brought it to the site in 2004 (see §10 above). The steam crane had not left the section of track on which it was originally placed when brought to the site due to the “*significant challenges*” in moving it (see §7 above). The decision was taken to construct a shelter to protect the steam crane from further decay because “*they were unable to house the crane*” (see §10 above). In my judgment, the Council has not come close to establishing that the Inspector's assessment was irrational.

**F. Ground 3: Movement of the crane**

*The ground*

42. The Council's third ground is 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.

*The parties' submissions*

43. Mr Jones submits that at the end of §10 of the decision the Inspector speculated on matters which, if correct, should have been addressed by the Society in evidence, giving the Council an opportunity to respond. The Society did not contradict §5.3.7 of the Council's Statement of Case (quoted in §11 above). In their ground (g) appeal the Society's case was that they would need 12 months to remove the steam crane, not that it would be impossible to find somewhere else to store it. The Inspector reached a conclusion that neither party had advanced.
44. Mr Jones submits that in taking into account the matters he did at the end of §10 of the decision, the Inspector had regard to an immaterial consideration. He should not have filled a gap in the Society's case with speculation on matters going well beyond planning judgment, at least not without giving the Council an opportunity to comment.
45. Mr Streeten submits that the question whether the steam crane could be moved to and from site was squarely before the Inspector in light of the reasons given by the Council in the enforcement notice, as expanded upon in the Council's submissions to the Inspector. The Inspector was not bound to accept the Council's assessment that the Society had provided inadequate justification to demonstrate why the steam crane needed to be stored on site, rather than brought to the site for the duration of the rally. The Council should not be permitted a second bite of the cherry simply because they did not anticipate that they might lose on this aspect of the case: *Kerry v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 908 (Admin) at §§46-51.
46. The considerations referred to in §10 of the decision are not immaterial but go precisely to the questions the Inspector was required to decide.
47. The Society's case on the ground (g) appeal was that they would need a year to find somewhere to store the steam crane if they were required to demolish the building. The time they sought to find alternative storage if the enforcement notice was upheld does not support the Council's submission that any alternative site was readily available or that it would be feasible for the steam crane to be moved to and from the site on an annual basis.

*Analysis*

48. There is very considerable overlap between the Council's third ground and the matters I have already addressed in the context of the second ground. I agree with the Secretary of State's submissions, as summarised above, that there is no merit in this ground. The feasibility of storing the steam crane off site and transporting it to and from the rally, and the availability of alternative storage, was squarely before the Inspector and he reached sound conclusions on the evidence before him. The matters he considered were not immaterial.

49. The Council's submissions before the Inspector anticipated that if the building had to be demolished the steam crane would remain on site in the open. The Council lost on the question whether the need for the steam crane to be stored under cover had been demonstrated. It would have been open to the Council to have presented evidence in support of its fall-back position that the steam crane could be stored elsewhere, but it did not. It was open to the Inspector on the evidence (including that to which I have referred in §41 above) to conclude that he was not satisfied covered storage for the steam crane was readily available elsewhere.

**Conclusion**

50. The appeal is dismissed on all grounds.