



Image courtesy of <https://www.kedlestonvoice.com/single-post/2017/06/22/Residents-Delight-as-High-Court-Judge-Quashes-Inspector's-Decision>

The original case concerned an Inspector's decision of 22nd August 2016, granting planning permission for a housing development on land close to the grade I listed Kedleston Hall. Lang J quashed the decision, concluding the Inspector had adopted an unlawfully narrow approach to the question of the "setting" of the listed building, had focussed on finding a "visual" connection, and had "set to one side" the historic social and economic connections between the appeal site and the hall.

The Court of Appeal has now confirmed (18 July 2018) that the setting of heritage assets "is not necessarily confined to visual or physical impact" and that other considerations are potentially relevant. Giving the leading judgment, Lindblom L.J. set out three general principles to be applied when considering the setting of a listed building and the potential effect of a development on that setting:

- "First, the section 66(1) duty, where it relates to the effect of a proposed development on the setting of a listed building, requires the decision-maker to understand what that setting is – even if its extent is difficult or impossible to delineate exactly – and whether the site of the proposed development will be within it or in some way related to it. Otherwise, the decision-maker may find it hard to assess whether and how the proposed development "affects" the setting of the listed building, and to perform the statutory obligation to "have special regard to the desirability of preserving ... its setting."
- "Secondly... none of the relevant policy, guidance and advice prescribes for all cases a single approach to identifying the extent of a listed building's setting. The decision-maker must apply planning judgment to the particular facts and circumstances, having regard to relevant policy, guidance and advice. The facts and circumstances will differ from one case to the next. In the NPPF and the PPG, the decision-maker has to concentrate on the "surroundings in which [the heritage] asset is experienced", keeping in mind that those "surroundings" may change over time, and also that the way in which a heritage asset can be "experienced" is not limited only to the sense of sight."
- "Thirdly, the effect of a particular development on the setting of a heritage asset – where, when and how that effect is likely to be perceived, whether or not it will preserve the setting of the listed building, whether, under government policy in the NPPF, it will harm the "significance" of the listed building as a heritage asset, and how it bears on the planning balance – are all matters for the planning decision-maker, in that "considerable importance and weight" must be given to the desirability of preserving the setting of a heritage asset."

The Court of Appeal allowed the appeal for 400 homes proposed by Catesby Estates concluding that the Inspector in this case had not adopted an unlawfully narrow approach to the issue of setting and had not discounted historical, social and economic connections as irrelevant.

We are increasingly involved in heritage assessments as early as advising on the suitability of local plan site allocations and whether consideration of setting needs to form a crucial aspect of development design. All our assessments are informed by site visits early in the process that can serve to highlight constraints and enhancement opportunities.

**If you need advice on any aspect of the historic environment, or how it may influence your application, please contact one of our specialists:**

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