

‘Steer’

Neutral Citation Number: [2018] EWCA Civ 1697

Paragraph 25 states if a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one’s experience of the listed building in its surrounding landscape or townscape.

Also, paragraph 26 notes the potential relevance of other considerations – economic, social and historical.



Neutral Citation Number: [2018] EWCA Civ 1697

Case Nos: C1/2017/1840 and C1/2017/1934

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ADMINISTRATIVE COURT**  
**PLANNING COURT**  
**MRS JUSTICE LANG DBE**  
**[2017] EWHC 1456 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18 July 2018

**Before:**

**Lord Justice McFarlane**  
**Lord Justice Lindblom**  
**and**  
**Lady Justice Asplin**

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**Between:**

**C1/2017/1840**

**Catesby Estates Ltd.**

**Appellant**

**- and -**

**Peter Steer**

**Respondent**

**- and -**

**Historic England**

**Intervener**

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**Mr Rupert Warren Q.C.** (instructed by **Eversheds Sutherland (International) LLP**) for the **Appellant**  
**Ms Nina Pindham** (instructed by **Richard Buxton Environmental & Public Law**) for the **Respondent**  
**Ms Emma Dring** (instructed by **Sharpe Pritchard LLP**) for the **Intervener**

other than the visual and physical well in mind. The idea that he simply put those considerations to one side is wrong.

23. Ms Nina Pindham, for Mr Steer, and Ms Emma Dring, for Historic England, supported the judge's analysis. They submitted that the inspector's approach was unduly narrow. In identifying the setting of Kedleston Hall and assessing the likely effects of the development on that setting, he had considered only views and the impact on views. He did not consider historical factors. When dealing with the other heritage assets, the inspector also focused on visual impacts alone. Historical factors, Ms Pindham and Ms Dring submitted, can be enough on their own to bring a site within the setting of a listed building. And that was so with Kedleston Hall. A visual connection is not necessary in every case.
24. Although the "setting" of a listed building is a concept recognized by statute, it is not statutorily defined. Nor does it lend itself to precise definition (see *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427, at paragraphs 53 to 58). Implicit in section 66 of the Listed Buildings Act, however, is that the setting of a listed building is capable of being affected in some discernible way by development, whether within the setting or outside it. Identifying the extent of the setting for the purposes of a planning decision is not a matter for the court, but will always be a matter of fact and planning judgment for the decision-maker. And as Sullivan L.J. said in *R. (on the application of The Friends of Hethel Ltd.) v South Norfolk District Council* [2011] 1 W.L.R. 1216, "the question whether a proposed development affects, or would affect the setting of a listed building is very much a matter of planning judgment for the local planning authority" (paragraph 32 of the judgment).
25. In *Williams* – where judgment on the appeal was given after the hearing in this case, and shortly before Lang J.'s judgment was handed down – the grant of planning permission for a wind turbine was challenged on the ground that the local planning authority had failed lawfully to consider the likely visual effects of the development on the settings of several heritage assets, including two scheduled monuments and a grade II\* listed church. The only potential effects on the settings of the heritage assets in that case were visual. It was in this context that I distinguished between the "site" of a scheduled monument and its "setting", which, I said, "encompasses the surroundings within which the monument may be experienced by the eye" (paragraph 31). I went on to say that the circumstances in which the section 66(1) duty has to be performed for the setting of a listed building will vary with a number of factors – typically, "the nature, scale and siting of the development proposed, its proximity and likely visual relationship to the listed building, the architectural and historic characteristics of the listed building itself, local topography, and the presence of other features – both natural and man-made – in the surrounding landscape or townscape", and possibly "other considerations too", depending on "the particular facts and circumstances of the case in hand" (paragraph 53). To "lay down some universal principle for ascertaining the extent of the setting of a listed building" would be, I thought, "impossible". But – again in the particular context of visual effects – I said that if "a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one's experience of the listed building in its surrounding landscape or townscape" (paragraph 56).

26. This does not mean, however, that factors other than the visual and physical must be ignored when a decision-maker is considering the extent of a listed building's setting. Generally, of course, the decision-maker will be concentrating on visual and physical considerations, as in *Williams* (see also, for example, the first instance judgment in *R. (on the application of Miller) v North Yorkshire County Council* [2009] EWHC 2172 (Admin), at paragraph 89). But it is clear from the relevant national policy and guidance to which I have referred, in particular the guidance in paragraph 18a-013-20140306 of the PPG, that the Government recognizes the potential relevance of other considerations – economic, social and historical. These other considerations may include, for example, “the historic relationship between places”. Historic England's advice in GPA3 was broadly to the same effect.
27. It has also been accepted in this court that the effect of development on the setting of a listed building is not necessarily confined to visual or physical impact. As Lewison L.J. said in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061 (in paragraph 5 of his judgment), “[although] the most obvious way in which the setting of a listed building might be harmed is by encroachment or visual intrusion, it is common ground that, in principle, the setting of a listed building may be harmed by noise or smell”. In that case the potential harm to the setting of the listed building was by noise and odour from four poultry broiler units.
28. Three general points emerge. First, the section 66(1) duty, where it relates to the effect of a proposed development on the setting of a listed building, makes it necessary for 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 ...”.
29. Secondly, though this is never a purely subjective exercise, 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. Nor could it. In every case where that has to be done, 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. It may be that the site of the proposed development, though physically close to a listed building, has no real relationship with it and falls outside its setting, while another site, much further away, nevertheless has an important relationship with the listed building and is within its setting (see the discussion in sections 14.3, 15.2 and 15.8 of Mynors and Hewitson's “Listed Buildings and Other Heritage Assets”, fifth edition). Under current national planning policy and guidance in England, 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. The “surroundings” of the heritage asset are its physical surroundings, and the relevant “experience”, whatever it is, will be of the heritage asset itself in that physical place.
30. Thirdly, the effect of a particular development on the setting of a listed building – 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”