

Case Name: *Catesby Estates Ltd v Steer* [2018] EWCA Civ 1697 (18 July 2018)

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Commentary: The "setting" of a listed building is not limited to visual and physical factors, other considerations such as economic, social and historical are potentially relevant. The Court of Appeal did not agree with first instance Judge that the Inspector had erred in law by not taking the relevant considerations into account. The appeal was allowed.

Lindblom LJ. Identified three general points:

1. 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 ...".
2. 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.
3. 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" of the listed building as a heritage asset, and how it bears on the planning balance – are all matters for the planning decision-maker, subject, of course, to the principle emphasized by the court in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2015] 1 WLR 45 (at paragraphs 26 to 29), *Jones v Mordue* [2016] 1 WLR 2682 (at paragraphs 21 to 23), and *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061 (at paragraph 5), that "considerable importance and weight" must be given to the desirability of preserving the setting of a heritage asset. Unless there has been some clear error of law in the decision-maker's approach, the court should not intervene.

For further discussion please see *simonicity*

Case summary prepared by Town Legal LLP