In June 2017 the Planning Court handed down judgment to a legal challenge of a Planning Inspector's decision to grant permission for housing development on a site located less than 1km away from Kedleston Hall, a Grade I listed building standing within a Grade I Registered Park and Garden in Derbyshire. The appeal site was situated on land that had historical, social and economic connections with Kedleston Hall, forming part of its large agricultural estate situated beyond the designed parkland, which was managed from the Hall. However, the site was not visible from Kedleston Hall itself (and vice versa) because it was hidden by a belt of woodland known as the Derby Screen, introduced in the 1960s to obscure views of development and night-time glare from the expanding urban area of Derby.

The Inspector agreed with various objectors including, Historic England and the National Trust that the historical, social and economic connections between the Hall and the appeal site brought the site within the setting of the Hall. However, he said that: "there has to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting".

He concluded that the appeal site was not currently part of the setting of the Hall due to the existence of the Derby Screen and was not within the setting from a historical perspective either because there was nothing to suggest that any historical view might someday be restored. The local planning authority had originally refused the application.

However, the Court (Mrs Justice Lang DBE) has now agreed with the objectors that the Inspector had "adopted an artificially narrow approach to the issue of setting which treated visual connections as essential and determinative", and that this had amounted to an error of law.

Her judgment contains the following points of note:

- It confirms that, as a statutory consultee, the views of Historic England should be given "great" or "considerable" weight, and a departure from those views requires "cogent and compelling reasons".
• It confirms that the National Planning Policy Framework (NPPF) Planning Practice Guidance (PPG) and Historic England’s ‘Good Practice Advice in Planning 3: The setting of Heritage Assets’ (GPA3) all support a "broad meaning given to setting", and that although "a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative". The word 'experienced' in the NPPF definition of 'setting' "has a broad meaning which is capable of extending beyond the purely visual".

• It confirms that the NPPF definition of 'setting' includes the term 'surroundings', and therefore any concerns about remote land being included within the setting of a heritage asset in the absence of a physical or visual connection was "misplaced" because there was "a geographical limitation on the extent of setting".

The assessment of harm to heritage assets is sometimes confused with the assessment of visual or landscape harm, but this judgment is a timely reminder that heritage assets can be harmed by development in their settings without there necessarily being any visual impact.

The Court made substantial reference to Historic England’s GPA3 and the guidance it contains about identifying impacts arising from development in the setting of heritage assets, including the staged approach to decision making and the list of 'attributes' (including non-visual attributes) which may help to elucidate its contribution to the significance of the asset.

In line with the Institute of Environmental Management and Assessment’s (IEMA) Environmental Impact Assessment (EIA) Quality Mark Scheme, which advocates best practice in EIA, screening, scoping and full cultural heritage and landscape and visual assessment exercises should now be undertaken with this broader approach to setting in mind. A review of the definitions used to define impact significance, in particular the sensitivity of the receptor, should also be undertaken. Finally, it is also crucial for setting to be considered from the outset as an important, guiding aspect of site layout and development design and for impacts on setting to be considered at every design iteration. Master plan / design teams should be engaging cultural heritage and landscape architect specialists from the start in order to maximise design / layout opportunities and avoid or minimise adverse impacts on setting.