

Application Ref 2015/2026/P, 41 Frognal

1. Frognal Close contains a number of Grade II listed buildings and the proposed development is also within a conservation area.
2. Where a development affects a listed building or its setting, then under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the local planning authority is under a duty to have “special regard to the desirability of preserving... its setting”.
3. There is a parallel duty under 72(1) in relation to the preservation of Conservation Areas.
4. Preservation for this purpose means doing **no** harm: see South Lakeland District Council v Secretary of State for the Environment [1992] 2 AC 141 per Lord Bridge at p. 150.
5. The setting of Frognal Close and of the listed buildings and of the conservation area will be adversely affected for the reasons already stated in the detailed objections made by the occupants of Nos 1 and 2 Frognal Close.
6. Accordingly, harm will be done and thus the duties under sections 66 and 72(1) are triggered.
7. A number of authorities have stressed the importance to be attached to the duty under section 66 and the parallel duty under section 72(1) We refer in particular to:
 - a. The Bath Society v Secretary of State for the Environment [1991] 1 WLR 1303; per Glidewell LJ at p. 1318 F-H.

“Since, however, it is a consideration to which special attention is to be paid as a matter of statutory duty, it must be regarded as having considerable importance and weight.....”

- b. South Lakeland District Council v Secretary of State for the Environment
[1992] 2 AC 141 at p. 146 E-G

“...the intention of section [72(1)] is that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. ***If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission***, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest.” [emphasis added]

- c. Barnwell v. East Northamptonshire District Council [2014] EWCA Civ 137
per Sullivan LJ at par. 29

“For these reasons, I agree with Lang J’s conclusion that Parliament’s intention in enacting section 66(1) was that decision-makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise”

8. There is thus a “strong presumption” against the grant of planning permission in this case.
9. No relevant countervailing considerations in the public interest have been identified.
10. Accordingly, the proper course is for the application to be rejected.