

How the urn lost its listing

With acknowledgements to Rudyard Kipling

This, O my Best Beloved, is a story - a new and a wonderful story - a story quite different from the other stories - a story about the most wise judge Lord Carnwarth and the rather strange case of *Dill v Secretary of State for Housing, Communities and Local Government and Stratford-upon-Avon District Council*: 2020



Now attend all over again and listen! Lord Carnwarth was wise. He understood what the beasts said, what the birds said, what the fishes said, and what the insects said. He understood what the rocks said deep under the earth when they bowed in towards each other and groaned; and the understood what the trees said when they rustled in the middle of the morning. And above all, he knew that a decorative urn, however large and imposing it may be, is not a building.

Our tale begins in 2009 when Marcus Dill sold a pair of 18th century urns at auction for £55,000, that he had inherited alongside a Grade II listed manor house. Now these giant urns, attributed to John van Nost (circa 1700), along with their limestone piers, had been moved several times before they ended up on the entrance drive to Idicote Park in 1973, prior to the listing of the house in 1986.

Mr Dill did not realise that the urns were included on the statutory listed buildings register and was therefore surprised and indeed aggrieved when Stratford-upon-Avon District Council wrote to him in 2015, asking him to restore them to their previous location. This being both difficult (as they had gone abroad) and expensive, he contacted English Heritage, who indicated that they would not agree to have the urns de-listed. However he decided to apply for Listed Building Consent to allow their removal, which the Council refused in February 2016 before serving him with a listed building enforcement notice in April. Mr Dill (unsurprisingly) appealed against the notice and the Listed Building refusal, but in January 2017 an Inspector dismissed both appeals.

Action now moved to the High Court, which dismissed Mr Dill's challenge to the Inspector's decision in September 2017, and then the Appeal Court, which upheld that ruling in November 2018. So eventually we arrive at the Supreme Court and the learned judgement of Lord Carnwarth, handed down in May 2020. This clarified two separate legal issues: first, whether an Inspector determining a listed building appeal

Don't clap too hard, it's a very old building
– John Osborne *The Entertainer* 1957



under the planning acts is allowed to consider a challenge that something listed is in law actually a "building"; and second, what is a building?

On the first issue, Lord Carnwarth determined

that because it is a Rule of Law principle that "individuals affected by legal measures should have a fair opportunity to challenge those measures...", it was legitimate for Mr Dill to query whether the urns were buildings. On the second issue, Lord Carnwarth applied a test set out in the case of *Skerritts of Nottingham v Secretary of State for the Environment, Transport and the Regions (no.2)* (2000), that in common law the definition of a structure as a 'building' depends on its size, permanence and the degree of physical attachment to its site. In this case the urns were large but not as big as a house, were not fixed to the listed building and were (obviously) capable of being moved. In addition, they were not even part of the original manor.

The moral of this tale, *Best Beloved*, is contained in Lord Carnwarth's comment that there is "a disturbing lack of clarity about the criteria which have been adopted by the relevant authorities [such as English Heritage], not only in this instance but more generally, in determining whether free-standing items such as these are regarded as qualifying for listing protection". Appearance on a statutory list does not necessarily mean that an object is a 'listed building'. "If it is not in truth a building at all, there is nothing to say that mere inclusion in the list will make it so", he added. Clarity in listing (as with much else in planning) is required. It is not simply that an object may be of special artistic or historic interest in itself, but "the special interest must be linked to its status as a building".

So now we know, a listed building is a building, not the works of art contained within or around it - unless, indeed, they are an essential part of the original design. So that's all right, *Best Beloved*. Do you see? ■

With aching hands and bleeding feet
We dig and heap, lay stone on stone...
Not till the hours of light return,
All we have built do we discern
– Matthew Arnold 1852