

# Listed buildings, art and heritage: *Dill* in the Supreme Court

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*Starting in a few minutes*

# The items (or “vases”)

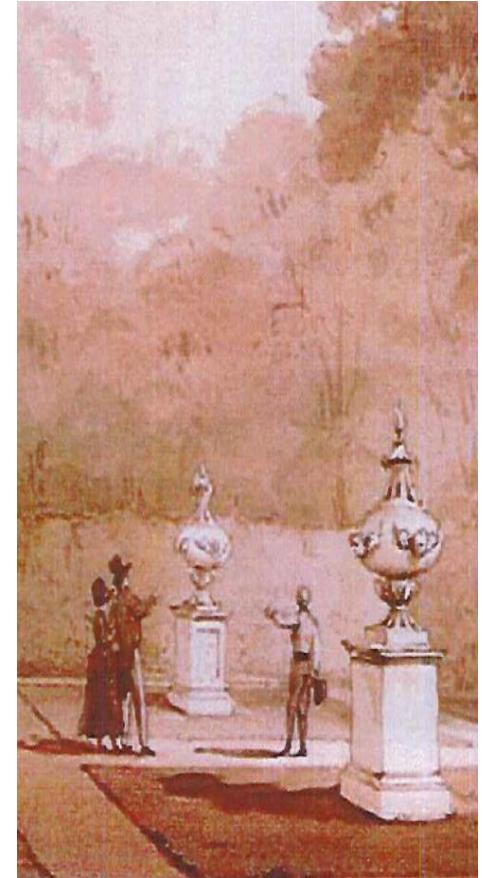
- Pair of 18<sup>th</sup> century lead urns, attributed to John van Nost (circa 1700), and limestone piers (circa 1720s)
- Originally at Wrest Park
- Moved 4 times before ending up at Idlicote House (Grade II) in 1973.
- Listed as Grade II in 1986

274cm



# Background to appeal

- 2009 – Mr Dill sold items at public auction
- April 2015 – Council first wrote to Mr Dill re items
- May 2015 – HE indicate will not consider application for de-listing
- June 2015 – Mr Dill applied for LBC
- February 2016 – Council refuse LBC
- April 2016 – Council issued LBEN
- January 2017 – Inspector dismissed appeals against LBEN and LBC
- September 2017- High Court dismisses challenges to Inspector’s decision
- November 2018 – Court of Appeal dismisses appeal
- May 2020 – Supreme Court grant appeal and remit LBEN appeal to SoS



Earl de Grey's watercolour showing the finials in the Duke's Garden 1830s



# Idlicote House



# Issue 1: The right to challenge

- Issue 1: whether Inspector hearing appeal under s.20 or s.39 LBA can consider whether or not something on that list is a “building”
- Inspector’s decision – the status of the item as a building was not open to challenge upheld by the High Court and Court of Appeal



*“And don’t go whining to some higher court.”*

# Issue 1: The Supreme Court

- (1) **Rule of law** principle that “*individuals affected by legal measures should have a fair opportunity to challenge these measures and to vindicate their right in court proceedings*”, citing *Boddington* [1999] 2 AC 143: § 20
- (2) Statutory construction – no **specific exclusion** of right to challenge:
- A listed building means “*a building which is ... included in [the] list...*”. “*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. [...] There is nothing to prevent the accused arguing that the item on the list is not a “building” and so not within the definition*”: § 24
  - Challenge to status of items as building also falls within s. 39(1)(c) – “*the matters alleged to constitute a contravention of s.9(1)...do not constitute such a contravention*”: § 25
- (3) **Policy**: against desirability of certainty is the fact that contravention of listed building control is a criminal offence: § 23

# Issue 2: what is a building?

- Planning (Listed Buildings and Conservation Areas) Act 1990, s 1(5):
- In this Act “*listed building*” means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—
  - (a) any object or structure fixed to the building;
  - (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,shall ... be treated as part of the building.



# Issue 2: what is a building?

- Critical distinction between extended definition of building, and a listed building in its own right: § 35



'Old Flo', Henry Moore

- For the purposes of applying the extended definition, apply real property concepts under the common law: § 39, i.e. (1) method and degree of annexation; (2) the object and purpose of the annexation



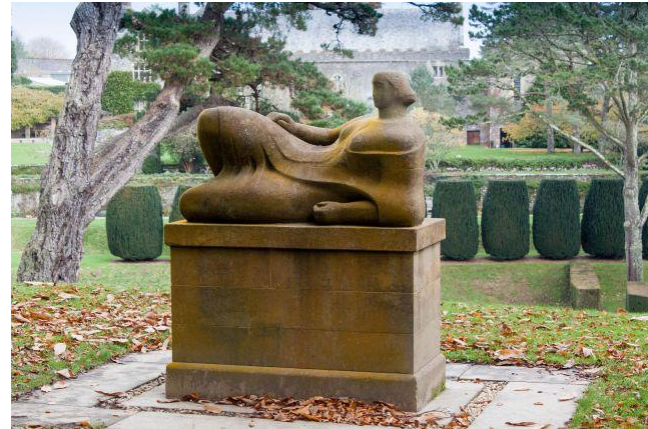
# Issue 2: what is a building?

For purpose of determining whether garden objects or structures as “buildings” in their own right apply the *Skerritts* test: § 59

- Size
- Permanence
- Degree of physical attachment



Crystal Palace Dinosaurs



Reclining Woman, Henry Moore

# Implications

- Implications for objects/buildings
- Implications for art sales (including export/tainted cultural objects)
- Implications for listing process (HE selection guide; formal processes for listing and review)