

Current issues in listed building regulation: *Dill*, “building” and curtilage

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Planning (Listed Buildings and Conservation Areas) Act 1990

LBCAA 1990 s. 1(1)

“1.— Listing of buildings of special architectural or historic interest

(1) For the purposes of this Act and with a view to the guidance of local planning authorities in the performance of their functions under this Act and the principal Act **in relation to buildings of special architectural or historic interest, the Secretary of State shall compile lists of such buildings**, or approve, with or without modifications, such lists compiled by the Historic Buildings and Monuments Commission for England (in this Act referred to as “the Commission”) or by other persons or bodies of persons, **and may amend any list so compiled or approved”**

LBCAA 1990 s. 1(3), (5)

“(3) In considering whether to include **a building** in a list compiled or approved under this section, the Secretary of State may take into account not only the building itself but also—

(a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and

(b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the **building** consisting of a manmade object or structure fixed to the building **or forming part of the land and comprised within the curtilage of the building.**”

“(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, subject to subsection (5A)(a), be treated as part of the building.”

Dill and “building”

LBCAA 1990 s. 91(2)

- S. 91(2) provides that “building” shall have the same meaning as in s. 336(1) of the Town and Country Planning Act 1990
- S. 336(1) provides as follows:
 - “‘Building’ includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised within a building”.
- Cases on “building” in the planning context prior to *Dill* include ***Cardiff Rating Authority v Guest Keen Baldwin’s Iron and Steel Co Ltd*** [1949] 1 KB 385 (a rating case) applied in ***Barvis Ltd. v Secretary of State for the Environment*** (1971) 22 P. & C.R. 710 at 715-7 (Bridge J.) and ***Skerritts of Nottingham Limited v Secretary of State*** (No 2) [2000] JPL 2015 at 1031-4 (Schiemann LJ).

Dill v Secretary of State

- Supreme Court judgment allowing the appeal [2020] UKSC 20, 20 May 2020
- Inspector refused to allow a challenge to the listing of a pair of large early 18th century ornamental lead urns (c.1700) on limestone piers (c. 1720) at Idlicote House, Warwickshire, as part of a LB enforcement appeal. The urns and the piers had been moved several times and at the time of listing in 1986 were not located on the property for which they had been made. The owner had removed and sold them at auction in 2009 for £55,000 without knowing they were listed. The listing decision and paperwork on which it was based could not be found.
- Mr Dill did not use either of the non statutory routes for seeking to have the items delisted but appealed a LBEN and refusal of LBC and argued that the items were not “buildings”, lacked special interest and that in any event LBC should be granted. The inspector rejected his appeals, and Singh J. and Court of Appeal [2018] EWCA Civ 2619 agreed with the Inspector



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The Wrest Park Finials: A pair of extremely rare and fine lead lidded finials attributed to John van Nost

circa 1700

on later limestone pedestals

274cm.; 108ins high overall

The garden at Wrest Park, Bedfordshire begun in the 1680's by Antony Grey, 11th Earl of Kent and continued by his son, Henry, created 1st Duke of Kent was one of the grandest and most admired gardens established in England in the first part of the 18th Century. It's roots lay in the Anglo-Dutch gardens of the 1690's and were intended to convey the Grey family's political support of William and Mary and the Glorious Revolution.

Among contemporary documents that demonstrate Wrest's high reputation is the record of a garden tour in 1735, in which the gardens were described as "undoubtedly some of ye finest in England". Wrest had already been singled out for praise in 1781 in the *Ichnographica Rustica* of Stephen Switzer and John Mackay who included it in the fourth edition of his *Journey through England* in 1724 repeated what was probably the standard view of Wrest when he called it "A very magnificent, noble Seat, with large Parks, Avenues and fine Gardens".

Wrest was one of only four estates that appeared in multiple views in Kip and Kniff's *Britannia Illustrata*. A generation later in 1735 Wrest was one of the earliest great gardens to be published in a large garden plan by John



Rocque in which these finials can be seen flanking the entrance to the Duke's Square garden.

John van Nost who died in 1729 was from a family of sculptors of Flemish descent. He had his own yard in the Haymarket, London by about 1687 and soon established himself as the leading maker of "Marble and Leaden figures, Busto's and noble Vases, Marble chimneypieces and curious Marble tables".

John van Nost is recorded as having supplied the two large lead vases, still in the Wrest Bowling Green House and eight lead heads for the Duke of Kent in 1725, and it is generally accepted that he supplied the impressive lead statue of William III in 1710-20 which still stands in front of the Pavilion at Wrest.





IDLICOTE HOUSE, PIER TO RIGHT SURMOUNTED BY LEAD URN APPROXIMATELY 51 METRES SOUTH EAST

Overview

Heritage Category:
Listed Building

Grade:
II

List Entry Number:
1186056

Date first listed:
30-Jun-1986

Statutory Address:

Location

Statutory Address:

IDLICOTE HOUSE, PIER TO RIGHT SURMOUNTED BY LEAD URN APPROXIMATELY 51 METRES SOUTH EAST

The building or site itself may lie within the boundary of more than one authority.

County:

Warwickshire

District:

Stratford-on-Avon (District Authority)

Parish:

Idlicote

National Grid Reference:

SP 28244 44136

Details

IDLICOTE SP2844 8/160 Idlicote House, pier to right surmounted by lead urn approx. 51m. SE

GV II

Pier surmounted by urn. C18. Limestone and lead. Square pier with panelled sides, moulded stone plinth and chamfered cornice. Urn is decorated with high-relief winged cherub's heads and flame finial.

Listing NGR: SP2824444136

Dill v Secretary of State

- The two issues for the Supreme Court were:
 - Whether an inspector considering an appeal under section 20 or section 39 of the Listed Buildings Act can consider whether or not something on that list is a “building”;
 - What criteria are relevant in determining whether an item appearing in its own right in the statutory list is a “building” for this purpose.
- Supreme Court disagreed with the courts below in a unanimous judgment given by Lord Carnwath
- That judgment has significant implications in terms of both procedure and the approach to determining whether an item is a “building” that may be listed under s. 1 LBCAA 1990

Dill: the ability to challenge listing (1)

- On a listed building enforcement notice appeal an applicant may challenge whether or not the item listed is a “building”.
- The qualification of the item for listing as a “building” is an essential element of the definition of “listed building” in s. 1(5) LBA 1990.
- S. 7 LBA 1990 will only be contravened in relation to a “listed building” which necessarily requires the item to be a “building”. Accordingly, the scope of an appeal under s. 39(1)(c), that is that the matters alleged to constitute a contravention of s. 9(1) do not constitute such a contravention, enables such an argument to be made (para. 25).

Dill: the ability to challenge listing (2)

- This also applies to a prosecution under s. 9 LBA 1990 (para. 24).
- Application to any context appears possible where a listed building may be in issue e.g. as part of a planning application or appeal (see s. 66 LBCAA).
- The NPPF guidance with regard to listed buildings especially at paras.193-196 (where the designated heritage asset is a listed building) is also predicated on the duty in s. 66 and the validity of the listing of a building, applying Lord Carnwath's logic (see Sales LJ in *Jones v Mordue* [2016] 1 WLE 2682 at [28]).

Dill: the ability to challenge listing (3)

- Current procedures do not make any provision as to what should happen if listing is challenged e.g. on a LBEN appeal of a planning appeal or the consequences of a determination that the item in question is not a “building” (regardless of its historic or architectural significance).
- Is the decision prospective only?
- Does this impose a duty on the SoS under s. 1(1) immediately to review the list and to remove the item from it, or to undertake a separate assessment in the light of the decision? Will it require Historic England to participate in all such cases?
- What if a LPA purports to question the listing in the court of determining an application?

Current listing and de-listing guidance

- See DCMS **Principles of Selection for Listed Buildings** (2018)
- Historic England’s guidance **Removing a Building from the List** (2019) –
 - “If a building is considered by the Secretary of State for Digital, Culture, Media and Sport to be of special architectural or historic interest it will be included on a list of such buildings. The List is maintained by Historic England. This guidance provides an overview of the application process for removing a building from the List, also known as de-listing. It should be noted that an application for de-listing is a separate process from the review of listing decisions, which is a challenge to the validity of a recent listing decision...
 - ... The statutory criteria for a building being included on the List are that it holds special architectural or historic interest. The Secretary of State will remove a building from the List only if it no longer meets these criteria.”
- Unsurprisingly, the guidance does not take account of the new procedural landscape created by *Dill*

Dill: the meaning of “building”(1)

- Lord Carnwath appeared sceptical of the listing of what he described (as he did in argument) as “vases” but (contrary to some reports of the case) did not reach a concluded view which was a matter for later assessment
- These “vases” with their (listed) plinths were both 9 feet high (274 cms), lead and limestone, and dated from the early 18th century when they had been installed in Wrest Park, Bedfordshire
- Mr Dill noted in his evidence -
 - *When they were taken from Idlicote House the finials and the top of the piers were lifted together and then the remaining part of each pier lifted. The items were lifted onto a Hiab lorry by its crane...” (w/s of Mr Dill)*

Dill: the meaning of “building”(2)

- He held
 - As to the approach to “buildings”, there is an important distinction between items which are listed in their own right as “listed buildings” and items which derive protection from the extended definition in section 1(5) LBA 1990 which catches fixtures and curtilage structures (paras 34-44).
 - In relation to items listed in their own right, the three tests from *Skerritts of Nottingham Ltd (No. 2)* [2000] JPL 1025, para. 39 are relevant. See also Bridge J. in *Barvis* (1971) 22 P & CR 710, 716-7
 - This involves considering size, permanence and degree of physical attachment. This requires an evaluative judgment in a reasonably flexible way reflecting the facts of the individual case (paras 45 – 56).

Dill: the meaning of “building”(3)

“50. *Skerritts* itself is of importance, both because it was the first time that the issue was considered at Court of Appeal level, and also because the three-fold test derived from the *Cardiff* case was treated as of general application in the planning context. It is also useful as an illustration of how the planning inspector was able to treat those tests as workable guidance in a very different factual situation from that considered in the earlier cases. In the definition of “building”, Parliament has used the general concepts of “erection” and “structure”, rather than more precise and specific terms, and these are applicable across a very wide range of cases. Therefore, the application of the definition requires an evaluative judgment to be made. The Court of Appeal confirmed that where the relevant decision-maker, in that case the inspector, directs himself by reference to *Barvis* and the guidance in the *Cardiff* case and arrives at a rationally defensible conclusion, his decision on the application of the statutory definition will be upheld as lawful.”

Dill: the meaning of “building” (4)

“52. ... It is notable that in both *Barvis* and *Skerritts* there was a clear move away from real property analogies. That seems to me correct. As has been seen, real property concepts are relevant to the extended definition, but there is nothing to import them into the basic definition of building. *Skerritts* provides clear authority at Court of Appeal level for the three-fold test, albeit imprecise, of size, permanence and degree of physical attachment. No preferable alternative has been suggested in this court. Given that the same definition of “building” is adopted in the Listed Building Act, it is difficult to see any reason in principle why the same test should not apply. On the other hand, notwithstanding the apparent width of the statutory definition, the mere fact that something had been “erected” on land was not sufficient to make it a building.”

Dill: the meaning of “building” (5)

- “52... *Skerritts* is a good illustration of the practical application of the relevant tests, and in particular of the importance of the method of erection (“a sizable and protracted event ... It is assembled on site, not delivered ready made”). In addition to the fact that installation occurred by erection, the degree of permanence of the location of the item on the site was significant.
- 53. In the listed building context that need for something akin to a building operation when the structure is installed can be seen as the counterpart to the reference to “works for the demolition” as the relevant contravening act under section 7 of the Listed Buildings Act, which clearly envisages some form of dismantling (ie “pulling down or taking to pieces” in the words of Jenkins J in the *Cardiff* case) when the item is removed from the site.”
- These considerations have potentially wide implications for the ability to list items of a decorative or commemorative nature which have simply been placed on land as does what Lord Carnwath added at [54] -

Dill: the meaning of “building”(6)

“54. It is also important to keep in mind the purpose of listed building control, which is to identify and protect buildings of special architectural or historic interest. **It is not enough that an object may be of special artistic or historic interest in itself; the special interest must be linked to its status as a building.** That is implicit in the reference to “architectural” interest. But it is relevant in my view also to the concept of historic interest. **The historic interest must be found not merely in the object as such, but in its “erection” in a particular place.**”

- These are not necessarily issues which take centre stage in the HE listing guidance e.g. for *Commemorative Structure (2017)* or *Garden and Park Structures (2017)*, or *Street Furniture (2017)*, although many items considered in those documents will be likely to qualify under Lord Carnwath’s application of the ***Skerritts*** test
- Implications for items (such as those in ***Dill***) moved from their original location prior to listing?

Guidance - Commemorative Structures



Commemorative Structures Listing Selection Guide (Dec 2017)

“This guide looks at outdoor commemorative monuments, here taken to include public statues and memorials, funerary monuments in churchyards and cemeteries, and war memorials. They include some of our finest works of public art and, taken together, they are our history made manifest. Monuments and memorials play a special part in the public realm and are always deserving of respect and care.”

- Many examples of listed statuary, tombs, tombstones and public monuments (such as war memorials)

Commemorative Structures

Listing Selection Guide



Guidance - Garden and Park Structures



Garden and Park Structures Listing Selection Guide (Dec 2017)

“This selection guide is devoted to individual built structures found in gardens and parks, rather than the designed landscapes themselves... All designed landscapes are likely to contain buildings and other hard landscaping features such as balustraded terraces that will often make a positive contribution to the overall character of the place. This selection guide helps identify which structures meet the test of special interest for listing..”

Garden and Park Structures

Listing Selection Guide



Guidance – Street Furniture

Street Furniture Listing Selection Guide (Dec 2017)

“Our streetscapes are greatly enriched by historic street furniture, which ranges from milestones to lamp posts, boundary walls to horse troughs, bollards to drinking fountains. But while roads are among the oldest features of the historic environment, their level of use makes their associated street furniture vulnerable to replacement, damaging change or removal. Its sheer ubiquity makes it sometimes overlooked and at risk of loss, especially items that are functionally redundant. Some features, such as drinking troughs, relics of horse-based transportation, or early gas lighting and overhead tram poles, which illustrate technology that once transformed everyday existence, can be quite modest. Others, such as the many drinking fountains erected from the 1860s onward, possess considerable intrinsic design quality. Humble as some structures might seem, their contribution to the public realm is often considerable ...”



Street Furniture

Listing Selection Guide



Listed building examples (1)



Figure 7
Headstone and footstone of the former slave, Scipio Africanus (d.1720), Henbury, Bristol. Listed Grade II* for its historic interest.



Figure 8
The Whyatt chest tomb in Egham churchyard, Surrey: notable examples of outdoor Georgian monuments will warrant listing. Listed Grade II.

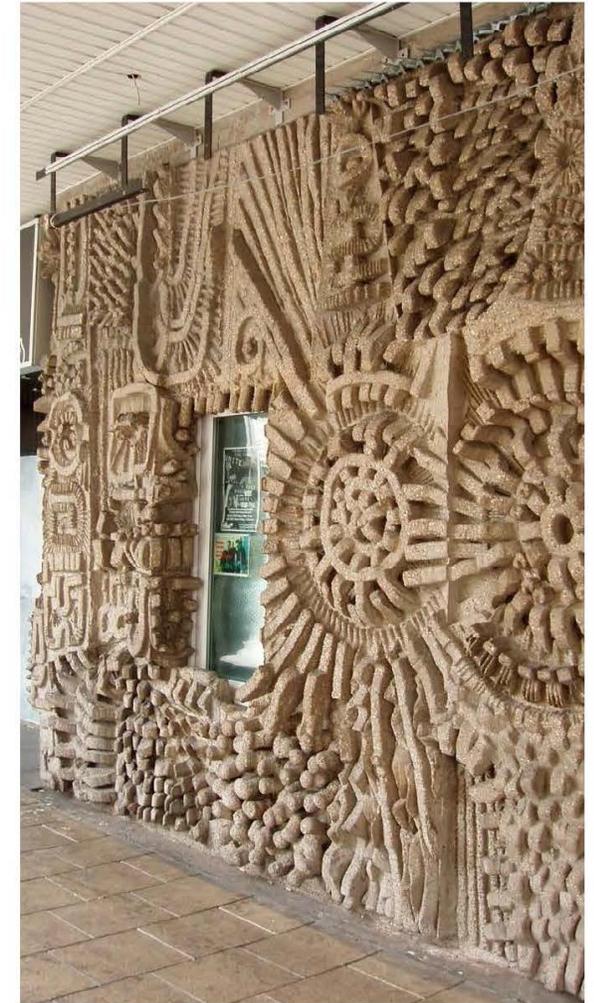


Figure 11
Public sculpture often enlivened post-war cityscapes: this relief (listed Grade II) of 1966 by William Mitchell graces the former Three Tuns pub in Coventry.

Listed building examples (2)



Figure 4

Wrest Park, Bedfordshire (landscape registered Grade I).
The restored mid-nineteenth century parterre, with

beyond Thomas Archer's Pavilion of 1709-11.
Listed Grade I.



Figure 14

Walcot, Shropshire (landscape registered Grade II).
The nineteenth-century game larder. Listed Grade II.

Listed building examples (3)



Figure 5

Dartington Hall, Devon (landscape registered Grade II*).
Henry Moore's Reclining Woman of 1947. Listed Grade II.

Listed building examples (4)



Figure 6
Boundary marker, Staple Hill, Bristol. This Grade II listed boundary marker, of pre-cast concrete, is thought to have been erected between 1951 and 1966. It marks the historic boundary between the City of Bristol and the ceremonial county of Gloucestershire.



Figure 7
Early twentieth-century finger post (listed Grade II) in St Newlyn, Cornwall. Cast iron, probably by the Basset foundry, indicating distances to Newquay, Cubert, Holywell, Zelah, Truro, Redruth, Crantock, Netlyn East and Mitchell. It is unusual for the number of fingers.



Figure 8
An early eighteenth-century house with attached Grade II listed street name plaque. The inscription reads 'Here is Sclater Street 1717'. The house itself has been extensively altered and is listed only for the sign attached to it.



Figure 12
A Grade II listed K6 type telephone kiosk on the Eskdale Hardknott Pass, Cumbria. This type was designed in 1935 by Sir Giles Gilbert Scott and made by various contractors out of cast iron. The dramatic setting adds to the interest of this example.

Listed building examples (5)



「Landmark
Chambers」



ZEBRA CROSSING NEAR ABBEY ROAD STUDIOS

Overview

Heritage Category:
Listed Building

Grade:
II

List Entry Number:
1396390

Date first listed:
21-Dec-2010

Statutory Address:
ZEBRA CROSSING NEAR ABBEY ROAD STUDIOS, ABBEY ROAD

Reasons for Designation

The Abbey Road Zebra Crossing, mid C20, is listed at Grade II for the following principal reasons:

* Historical interest: as the zebra crossing made internationally famous on the cover of The Beatles' 1969 Abbey Road album, and as a celebrated example of this important form of road safety crossing invented by Lord Hore-Belisha; * Group value: with the nearby Grade II Abbey Road Studios, a recording studio of huge renown used by many celebrated artists including The Beatles.

The pedestrian crossing in its modern form dates to 1934 and was introduced by Lord Hore-Belisha (1893-1957) who was the Liberal Minister for Transport. The first examples were in London but following the Road Traffic Act of 1934 were rolled out nationally in 1935. Originally the sides of the crossing were demarcated on the road by metal studs with diagonally opposing amber glass beacons on black and white poles to identify the crossing point. The beacons were not internally lit at this date. The crossings and the beacons were immediately referred to as Belisha Beacons after Lord Hore-Belisha. The black and white stripes, as well as flashing beacons, were added from March 1949 following public calls to increase their visibility and thus the safety of pedestrians. The distinctive stripes led to the crossings being known as 'Zebra Crossings', the start of a group of crossings named after fauna such as Pelican, Puffin and Toucan. The zebra crossing's dimensions and design details were formalised by the 'Zebra' Pedestrian Crossing Regulations 1971. Modern beacons are in plastic and a further modification has seen the insertion of zig-zag lines on the approaches to the crossings to alert drivers that they must not park in these areas. Zebra crossings can now be found all over the world.

The Abbey Road album was The Beatles' final album recording and was first released on 26 September 1969. The majority of the album was recorded at Abbey Road Studios, 3 Abbey Road and the album cover shot on the nearby zebra crossing to the SE. Brian Southall, author of the 1997 history of Abbey Road Studios, reports that the idea for the cover originated with a Paul McCartney sketch of four stick men on the crossing. The photographer was Iain Macmillan who knew the Beatles through working with Yoko Ono and the photograph was taken on 8 August 1969. The photographer was only given about fifteen minutes and used a stepladder to take photographs while a policeman stopped the traffic.

It is an unusual cover in that it does not include the name of the band or album, but rather lets the image speak for itself; a decision taken by John Kosh, the creative director for Apple who rightly believed that as the most famous band in the world, text was unnecessary. The album topped both the UK and US charts. Come Together, the opening track, is probably the best known.

The cover image is very famous in itself and spawned conspiracy theories about coded messages implicit in the image: the notion that Paul McCartney was in fact dead as, for example, he is the only Beatle shown without shoes and out of step. Paul parodied the cover himself and referred to the conspiracy theory when photographed on the crossing with an Old English Sheepdog for the cover of his 1993 album 'Paul is Live', and there have been many other parodies internationally which are a testament to the significance and fame of the image. Recent examples include: a nude parody by the Red Hot Chili Peppers on their The Abbey Road EP (1988); Kanye West's 'Live Orchestration' album (2006) and a somewhat dark parody by the Argentinean comedy group Longua de Trapo ('Vinte e Um Anos na Estrade' album of 2000) where the band appear to have been run over.

The date that the crossing was installed on Abbey Road and the date of the added zebra stripes is not known (although the latter is presumed to date to the 1950s.) There has long been a suggestion that the crossing was slightly moved to the SE in the 1970s, closer to the junction with Grove Road. However, comparison between the cover photograph, other historic photos and its present position indicates that it is in fact in essentially the same position as in 1969. The crossing remains a place of pilgrimage, with the studios, for Beatles fans from all over the world. Groups of tourists always gather to photograph the crossing and walk the walk and there is a live video streaming web-cam.

Details

This list entry was subject to a Minor Amendment on 01/02/2017 Zebra crossing with belisha beacons, mid C20, Abbey Road.

DESCRIPTION: the zebra crossing is located on Abbey Road to the SE of Abbey Road Studios, outside Abbey House, 1-121, Abbey Road. It has six wide 'zebra' stripes painted in white onto the Tarmac road surface, flanked by two lines of dashed marks either side of the crossing and zig-zag approach lines along the approach kerbs and down the centre of the road, signifying to drivers that there is no parking on the approaches. Both the dashed marks and zig-zag lines are later additions, added since The Beatles' Abbey Road album cover photograph was taken in 1969, and are not of special interest. Two belisha beacons, are located at the NE and SW corners of the crossing with amber globes, probably plastic, atop black and white painted metal poles with stepped bases. Their date is not known but they are not of the earliest phase of beacons of 1930s vintage when the poles were straight and the globes in glass. Graffiti and stickers have been applied to the poles in a manner mirroring the graffiti applied to the garden wall of the nearby Abbey Road Studios. The belisha beacons are not visible on the album cover image but would have been in place at that time as the beacons pre-dated the zebra stripes on this type of crossing (and such stripes are absent from the album cover).