20 May 2020

PRESS SUMMARY

Dill (Appellant) v Secretary of State for Housing, Communities and Local Government and another (Respondents)
[2020] UKSC 20
On appeal from [2018] EWCA Civ 2619

JUSTICES: Lord Wilson, Lord Carnwath, Lady Arden, Lord Kitchin, Lord Sales

BACKGROUND TO THE APPEAL

This appeal raises two important questions about the interpretation and application of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"). The case concerns the correct treatment of a pair of early 18th century lead urns resting on limestone pedestals ("the items").

The items were originally commissioned for a historic garden at Wrest Park in Bedfordshire where they remained until 1939 but have been moved a number of times since then. In 1973 they were moved by Major Dill (Mr Dill's father) to the garden of Idlicote House. In June 1986 the items were added to the list of listed buildings under s.54 of the Town and Country Planning Act 1971. There is no record of notice of the listing having been served, but in due course it was included in the register of local land charges. In 1993 the Mr Dill (the appellant) acquired the house and the items. He was not aware of the items' presence on the list. In 2009 he sold them at auction.

On 29 April 2015 the district council (the second respondents) wrote to the Mr Dill informing him that listed building consent had been required for the items to be removed. His retrospective application for consent was refused on 11 February 2016, following which on 26 April 2016 the council issued a listed building enforcement notice requiring the reinstatement of the items at Idlicote House. He appealed against the refusal of listed building consent and the issuing of the enforcement notice to the Secretary of State for Housing, Communities and Local Government (the first respondent). The grounds of appeal included the argument that the items were not "buildings" for the purposes of the Listed Buildings Act.

The appeals were dismissed by a planning inspector on 19 January 2017. He took the view that the status of the items as "buildings" was established by the listing; that he could not reconsider the issue. Mr Dill's appeal was rejected by the High Court (Singh J) and the Court of Appeal (McCombe and Coulson LJJ). Both courts below held that listing was conclusive of the items being "buildings".

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Carnwath gives the sole judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

Whether listing is conclusive of the items being "buildings" for the purposes of the Listed Buildings Act

It is a principle that individuals affected by a legal measure should have a fair opportunity to challenge the measure and to vindicate their rights in court proceedings. In applying this principle, the context of the particular statutory scheme in question is relevant **[20]**. In the parallel context of breach of planning control, the statutory grounds of appeal are so wide that they include every aspect of the merits of the decision to serve an enforcement notice. It is hard to see why it should be any different in the context of a listed building enforcement notice. Indeed, the question of whether something is a "building" may raise difficult issues of factual judgment which an inspector appointed under the statutory scheme is more appropriately placed to decide than the High Court on judicial review **[22]**.

Under the statutory scheme a listed building means "a building which is… included in [the] list". It is an essential element that the thing in issue be a "building". If it is not in truth a "building" at all, there is nothing to say that the mere inclusion in the list will make it otherwise. Section 7 prohibits the demolition of a "listed building", and s.9(1) makes contravention of that prohibition a criminal offence. But there is nothing to prevent the accused arguing that the item demolished is not a "building" and so not within the definition **[24]**. As such, the question of whether the thing listed is in fact a building can be considered by the inspector on a statutory appeal **[25]**. The enforcement appeal must be remitted to the First Respondent for redetermination **[26]**. The application for listed building consent can be dealt with by agreement **[27]**.

The relevant test for a "building"

There is a need for general guidance on the legal principles in play in determining whether something constitutes a "building" **[28]**. In *Skerritts of Nottingham v Secretary of State for the Environment Transport and Regions* [2000] JPL 1025 a three-fold test was adopted considering size, permanence and degree of physical attachment **[46]**. This case is important as the three-fold test was treated as of general application in the planning context **[50]**. Along with other jurisprudence, it indicated a move away from real property analogies. Lacking a preferable alternative, and as the same definition of "building" as was in issue in *Skerritts* was adopted in the Listed Buildings Act, it is difficult to see any reason in principle why the same test should not apply **[52]**. The application of this test to the items is something to be considered in the context of the remittal of the appeal to the First Respondent **[58]**.

References in square brackets are to paragraphs in the judgment