

Appeal Decisions

Site visit made on 13 December 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 January 2017

Appeal A- Ref: APP/J3720/F/16/3151206

Idlicote House, Idlicote, Shipston-on-Stour CV36 5DT

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Marcus Dill against a listed building enforcement notice (LBEN) issued by Stratford-on-Avon District Council.
 - The notice was issued on 26 April 2016.
 - The contravention of listed building control alleged in the notice is the removal of a pair of limestone piers and surmounting lead urns.
 - The requirement of the notice is to reinstate both original piers and urns to their positions shown in the Historic England (HE) list description record.
 - The period for compliance with the requirements is six months.
 - The appeal is made on grounds (a), (c), (e) and (i) as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended.
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Appeal B - Ref: APP/J3720/Y/16/3150844

Idlicote Hill Farm, Idlicote, Shipston-on-Stour CV36 5DW

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent (LBC).
 - The appeal is made by Mr Marcus Dill against a refusal by Stratford-on-Avon District Council to grant listed building consent.
 - The application Ref 15/02294/LBC, dated 17 June 2015, was refused by notice dated 11 February 2016.
 - The works proposed (wording as on application form) are: to remove a pair of urns/piers and finials from the gardens of Idlicote House, (which it is believed were incorrectly listed in 1986. This approach has been (was) recommended by the Planning Enforcement Officer).
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Decisions

1. Both appeals are dismissed. See formal decisions below.

Matters of clarification and background information

2. The appeals relate to the removal of two listed limestone piers and surmounting lead urns from the grounds of Idlicote House, Shipston-on-Stour. The urns (also referred to as lead lidded finials) are attributed to John van Nost and date from the early 18th century. They were not commissioned for Idlicote House and are first recorded surmounting their limestone piers (also referred to as pedestals) in the Duke of Kent's garden at Wrest Park, Bedfordshire in the late 1720's. They are shown together there in an engraving of 1735.

3. The piers and urns are 274cm in height overall. They came into the ownership of the appellant's family in 1917 when Wrest Park was purchased by his great grandfather. After the sale of Wrest Park, in 1939, the family retained ownership and took them to their respective new homes; firstly to Coles Park, Hertfordshire in 1939,

then to the Dower House, Buntingford in 1955; next to Badgers Farm, Warwickshire in 1962; eventually ending up, in 1973, at Idlicote House.

4. At Idlicote House, the pair of piers surmounted by urns were positioned to stand on either side of what had served as the front drive entrance to the house since the 1840's, at a distance of approximately 50m from the South East façade of the house. In that position they would have demarked a change from shrubbery to open lawn and would have been seen from the house as backed by dark foliage to the South East. They would have been visible to be read with the house as they were not screened from it, nor too distant from it.

5. Idlicote House is of early/mid-18th century construction incorporating an earlier core; altered in 1863; restored in 1895 and with interior remodelling from the 20th century. It was listed at Grade II on 13 October 1966.

6. On 30 June 1986 the two piers surmounted by urns were separately listed in their own right at Grade II. The list descriptions (List entry numbers 1186056 – Pier to Right and 1024345 – Pier to Left) are as follows:

*IDLICOTE HOUSE, PIER TO THE RIGHT SURMOUNTED BY LEAD URN
APPROXIMATELY 51 METRES SOUTH EAST – GRADE II LISTED 30.06.1986
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 cherub's heads and flame finial.*

*IDLICOTE HOUSE, PIER TO THE LEFT SURMOUNTED BY LEAD URN
APPROXIMATELY 50 METRES SOUTH EAST – GRADE II LISTED 30.06.1986
Pier surmounted by urn. C18. Limestone and lead. Square pier with panelled sides, moulded stone plinth and chamfered cornice. Lead urn is decorated with high relief cherub's heads and flame finial.*

7. In 2009 the two piers and urns, were removed from their positions within the grounds of Idlicote House and were sold by the appellant at Summers Place Auctions, Billingham for £55,000 (Fifty five thousand pounds). The name of the purchaser is not known or, if it is, it has not been made known for the purposes of these appeals. However, it is confirmed by the appellant that the items were subsequently exported outside of the UK and that their current whereabouts is not known. It was not until around 5 years later, in 2014, that the LPA was made aware that the piers and urns had been removed from the land at Idlicote.

8. On 17 June 2015 an application was made for retrospective LBC to remove the listed pair of urns/piers and finials from the gardens of Idlicote House (Application No 15/02294/LBC). On 6 August 2015 Historic England (HE) responded to an invitation for comment on the application. In brief their comments were as follows:

- The pair of 18th century lead urns, each on its own stone pier, were listed separately at Grade II in 1986.
- Their significance as historic objects is high and, furthermore, this is recognised by the selling price at auction.
- The applicant justifies removal on the basis that the items were incorrectly listed in 1986, but without explanation as to why this might be the case or evidence that the listing was questioned prior to removal.
- Demolition (the definition within the legislation) has occurred and is illegal.
- The urns and piers are considered to be of 'special architectural and historic interest' - grounds for listing as for any listed building – and evidence of relocation is not a reason for denying listed status.
- In view of National Planning Policy Framework (NPPF) guidance, further investigation; enforcement and legal action are recommended.

9. On 24 September 2015, The Society for the Protection of Ancient Buildings (SPAB) also made comments on the application. In brief these are as follows:

- The theory that because the urns are not original to Idlicote they have no value (financial or otherwise) in being there, is not supported.
- Listing in 1986 recognised national interest and significance and was to prevent removal or alteration without the knowledge of the state.
- Location on private ground is of no consequence regarding designated heritage assets.
- Had permission been sought it is very unlikely that it would have been granted and the Society objects in principle to permissions being granted retrospectively.
- Enforcement action is supported.

10. Other representations on the application included one from the Parish Council (PC). Their view was that because the features were on private land; hidden from view; with no architectural connection to Idlicote House and that they were only introduced by a new owner, then the application was *'irrelevant to the village'*. In addition there was one objection, two representations of no objection and five letters of support. The latter referred to the removal as having no impact on the village, no impact upon Idlicote House and the fact that they were located out of view.

11. LBC was refused on 11 February 2016 and this refusal is now the subject of Appeal B. The reason for refusal was on the basis that the removal of the designated heritage assets amounted to demolition and thus causing substantial harm to their historic and architectural significance. The NPPF was referred to by the LPA and particularly the indication that substantial harm to an asset's significance should be *'exceptional'* and that *'substantial'* public benefit is required to outweigh any harm.

Relevant policy and guidance

12. The NPPF is a major material consideration and particularly section 12 which seeks to conserve and enhance the historic environment. The most relevant development plan policy is CS8 of the Stratford-on-Avon District Core Strategy 2001-2031 (SDCS) which was adopted on 11 July 2016. Policy CS8 is up to date with the NPPF and seeks to protect and enhance the historic environment of the District. Planning for the Historic Environment Good Practice Advice Notes (HEGPAN) are also relevant as is national Planning Practice Guidance (PPG). Because the urns and piers were listed as Grade II, I have had special regard to the duty set out in section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

Reasons

Introduction

13. The purpose of section 1 (and succeeding sections) of the PLBCAA is to protect buildings which are of special architectural or historic interest. It is a system of selective protection in that *'buildings'* are individually identified as being of special interest and are then *'listed'* under section 1. The statutory function of listing is vested in the Secretary of State (SOS) for the Department of Culture, Media and Sport (DCMS). The administration of the listing system is carried out by the Historic Buildings and Monuments Commission (Historic England – HE).

14. The consequence of listing is that it becomes an offence to carry out any works for the demolition (including removal or relocation) of a listed building or for its alteration or extension that in any manner would affect its special character, without consent (LBC) granted under section 10 of the PLBCAA. The offence of carrying out

unauthorised works to a listed building is one of strict liability and, therefore, does not require proof that a defendant knew that the building was listed.

15. The controls under the PLBCAA have immediate effect upon the inclusion of a building in the list and the SOS is required under section 2(3), as soon as possible thereafter, to notify the Council who are similarly required to notify owners and occupiers. The LPA is also required to secure that the listing of a building is entered as a charge in the local land charges register (LLCR). However, there is no provision that renders liability dependent on notification to owners and occupiers of the fact of listing. The LPA has provided details of the LLCR entry and I am satisfied that the correct procedures were carried out with regard to registration. I have noted that neither the LPA nor the appellant has been able to provide me with a copy of the notification of listing. However, none of the provisions relating to registration affects liability for the purposes of LBC.

16. Government policy on historic buildings was previously contained in PPG15, Planning and the Historic Environment (1994) and the subsequent PPS5 (March 2010) together with a Practice Guide issued at the same time. This policy and guidance was superseded in March 2012 by the NPPF (section 12) and further guidance is set out in Planning Practice Guidance (PPG).

17. In considering what should be listed, only a '*building*' may be listed. However, the term '*building*' is widely defined in section 336(1) of the Town and Country Planning Act 1990 (the principal Act). It includes '*any structure or erection, and any part of a building as so defined, but does not include plant or machinery comprised in a building*'. Over the years '*listed buildings*' have included many unusual '*structures and erections*', as well as the obvious whole, or parts of qualifying buildings. These have included, for example, telephone kiosks, pill boxes, post boxes, shipyard cranes and, as in this case, pieces of sculpture or statuary.

The facts of this case

18. The piers and urns, when produced for the owner of 'Wrest Park' (Duke of Kent) in the 1720s, were '*chattels*' for the purposes of property and ownership law. They remained as such, when the house was owned by the appellant's family and following their subsequent moves, via the Dower House and Badger's Farm. At Idlicote, they remained as '*chattels*' in their positions on either side of the driveway to the south east of the house.

19. When the piers and urns were separately listed on 30 June 1986, they became '*listed buildings*' in their own right. They were still in the ownership of the appellant and remained his '*chattels*' as a matter of property law. However, they were now '*chattels*' which were '*listed buildings*'. As such, from that date, they were subject to all of the protective provisions of the PLBCAA.

20. In the case of '*R (Judge) v First Secretary of State and Middleborough BC [2006] JPL 996*', it was held that it was '*wholly irrelevant*' what status the building's component parts might have as a matter of property law, because planning was a statutory code. It was also held that the term '*relocation*' was simply convenient shorthand for '*demolition and reconstruction*'. In this case the '*relocation*' was to a place unknown, outside of the UK.

The grounds of appeal and statement of case

21. In section 2 of the appeal statement the appellant asks that the SOS considers five propositions. These are as follows:

- (1) To find that the piers and finials together are not buildings, or alternatively, that the finials on their own are not fixed to buildings and so

are not listed, notwithstanding their inclusion on the list. Consequently their removal did not require LBC (ground c).

- (2) Alternatively find that the piers and finials (or whatever part of them are buildings) are not of special historic or architectural interest (ground a).
- (3) Alternatively, grant listed building consent for their removal (ground e).
- (4) Alternatively, find the steps would not serve that purpose (ground i).
- (5) That the notice fails to 'specify the alleged contravention' in breach of section 38(2) of the PLBCAA.

22. I have dealt with each ground of appeal in the same order as the appellant's propositions above, but I have considered No (5) first as, in essence, this challenges the validity of the LBEN.

The alleged contravention (5)

23. Because the LBEN recites all of subsection (1) of section 38 (reference to 9(1) and 9(2)) of the PLBCAA, it is contended that there has been a failure to specify the exact alleged contravention. However, the notice clearly indicates that there has been a contravention of Section 9(1) or (2). It is clear to all that the relevant subsection in this case is 9(1) and that 9(2) cannot apply. The appellant is clear about the alleged contravention: that is, the removal of the limestone piers and the lead urns. There can be no injustice, therefore relating to the way the allegation in the LBEN is worded.

Appeal A on ground (c) (1)

24. I consider that, for the purposes of the PLBCAA, both the right and the left piers and finials are '*listed buildings*'. The fact that they are not what one would normally call '*buildings*' is irrelevant. Section 336(1) of the principal Act includes '*any structure or erection*' (see above). The SOS added these two '*structures or erections*' to the statutory list of '*buildings*' on the advice of the HBMC (EH, now HE).

25. In the PLBCAA, Section 1(5) sets out that '*listed building*' means one which for the time being included in the statutory list. There is no question that the descriptions of the piers and finials (right and left) are on the formal list and that these descriptions accord with the submitted photographs. There is no evidence before me to indicate that they were mistakenly or unjustifiably listed. One cannot go behind the listing. It is there as a matter of fact and, therefore, there can be no valid argument that the piers and finials were not '*listed buildings*'.

26. I have concluded that each pier and finial is a '*listed building*' in its own right for the purposes of the PLBCAA. The items are '*buildings*' for this purpose. It is not a question of whether or not the piers are '*buildings*' and whether or not the finials are fixed to them. These arguments are also irrelevant. So too is the argument that they are not curtilage listed buildings. Also, the '*Debenhams plc v Westminster City Council* [1987] AC 396; '*R v SOS Wales ex p Kennedy* [1996] JPL 645; and '*Berkeley v Poulet*' [1977] 1 EGLR 86' cases as referred to by the appellant do not directly apply to the situations in these appeals.

27. In these appeals it is not a question of whether or not the piers and urns were objects or structures fixed to a building (or even to each other). Nor is it a situation whereby chattels might, or might not, be considered to be fixtures. The tests of the '*method and degree of annexation*' and the '*purpose of the annexation*' are equally not relevant in the assessment of whether or not the piers and urns are '*listed buildings*'. It matters not how they were fixed to each other or whether they were fixed to the ground since they were both listed in their own right where they stood at Idlicote.

28. Neither do the cases of '*Holland v Hodgson* LR 7C.P 328' and '*London Borough of Tower Hamlets v London Borough of Bromley* [2015] EWHC 1954 assist the appellant

in the argument that the piers and urns are not '*listed buildings*'. In the former case the question related to whether articles resting by their own weight formed part of the land. In the latter case the question was whether or not a piece of sculpture formed part of the land. In these appeals the fact is that the piers and urns were listed in their own right and positioned within the grounds of Idlicote House. On the date of listing they were in their positions on either side of the entrance drive.

29. The appellant also refers to the '*Skerritts of Nottingham Ltd v SOS Environment Transport and the Regions (no2) [2000] JPL 1025* case, in judging whether or not an object is a '*building*'. Again this case does not assist since, once added to the statutory list, the piers and urns became '*listed buildings*' for the purposes of the PLBCAA. It is not a case of applying the '*Skerritts*' tests as suggested by the appellant.

30. The questions of size; nature and degree of attachment and degree of permanence do not need to be considered to assess whether or not the piers and urns are '*listed buildings*' for the purposes of the PLBCAA. Nor can it be a questions of applying sections 5(a) or 5(b) of the Act, since the piers and urns were not objects or structures fixed to any other listed building and nor were they curtilage buildings.

31. I do not accept the contention that the piers and urns were not capable of being listed under section 1 of the PLBCAA or that they were listed by mistake. As '*erections or structures*' they clearly were treated as '*buildings*' and added to the list compiled by the SOS. As such, listed building consent was required for their removal. There is no consent in place and it follows that a contravention of the PLBCAA has occurred and that the appeal on ground (c) cannot succeed.

Appeal A on ground (a) (2)

32. An appeal on this ground in essence challenges the listing and is normally made on the basis that the listed building(s) is/are not of special architectural or historic interest. It effectively constitutes an application to the SOS to remove the building from the list which he is empowered to do by section 41(6)(c) of the PLBCAA. In such situations the SOS is obliged to consult with HE and with such other bodies or persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

33. The SOS will require professional advice as to why the '*listed building(s)*' are not of special historic or architectural interest. In this case the appellant asks that the SOS finds this to be so. It is stated that, since the listing documentation has not been found it is not known why the SOS (through English Heritage) considered them to be of special interest in 1986. It is not clear whether it was known at the time of listing that the piers and urns had only been at Idlicote House for just 13 years.

34. It is contended that the list description is brief and fails to say anything about the history of the items and it is also considered curious that far more interesting items, such as the statue of Diana and a Thomas Tompion Sundial were not listed. The HE comments on the LBC application links the significance of the items to the value realised at auction. It is contended that this identifies interest in them as objects, rather than buildings. It is stated that SPAB disagreed with HE in stating that the objects had no value '*financial or otherwise*'.

35. However, as referred to by the LPA, the decision (for the SOS to make) as to whether or not a '*listed building*' is of special or historic interest is a straightforward matter of fact and opinion based on professional advice/evidence. The SOS will need to be convinced that the '*listed building*' is no longer of special historic or architectural interest if it is to be removed from the list.

36. I agree with the LPA that, in addressing this ground of appeal, the need for professional judgement is central. In this case it would appear that the only professional judgement made in relation to the decision to list the items was made by the EH (now HE) and as a result the piers and urns were listed in 1986. The LPA indicates that it now relies on the professional advice of HE who are still of the view that the piers and urns are of special historic and architectural interest.

37. At this appeal stage neither the LPA nor the appellant have provided any detailed professional evidence on the special historic or architectural interest of the piers and urns. The former indicates that it had not been possible to inspect the items before their removal and the latter refers to the LPA and HE simply relying on the listing rather than fully justifying why they are of special interest.

38. Normally when ground (a) is pleaded there is detailed evidence from the parties on which an assessment can be made. In this case such detailed evidence is lacking. However, having seen photographs of the piers and urns, they are still distinctly recognisable from their list description. I have no reason to question the designating Inspector's professional judgement on the special interest of the items and the SOS clearly agreed with the recommendation to add the piers and urns to the statutory list. HE and SPAB are equally of the view that the piers and urns were of special historic and architectural interest. The details set out in the auction catalogue reinforce my view that the piers and urns were of significant special historic interest.

39. The fact that they date back to around 1720, in my view, is most relevant as is their historic provenance and initial link with Wrest Park. Whilst acknowledging that they were brought to Idlicote as items of garden statuary (as chattels), the piers and urns were prominently positioned, close to the house and on what used to be the main driveway entrance. It was in their respective positions, either side of this entrance, that they were listed. As indicated above they could be seen together with the house and were clearly intended to signify the original driveway entrance, separating the lawned gardens from the mature tree-lined driveway which leads to the gatehouse.

40. HE's selection Guide for *Garden and Park Structures* acknowledges that statuary, urns and other features became extremely popular in formal gardens. It also indicates that survivals are fairly common and that some items have often been moved or introduced from elsewhere (as in this case). It goes on to indicate that pre-1840 examples will generally merit designation. Thus, even though these piers and urns were not in their original positions they date back to the 1720s and are attributed to John van Nost, a Flemish sculptor who was also responsible for many other notable works in grand English Country Houses. In my view, these facts, together with their historic provenance linked to Wrest House, merited their Grade II designation in 1986.

41. There is nothing before me to indicate that the piers and urns were not worthy of their listed status in 1986. Between then and 2009 there was no application to the SOS to de-list them. There is also no evidence to indicate why, at the time of their removal, that they were unworthy of their listed status. In conclusion on this ground of appeal, therefore, I do not consider that there could have been any justification to de-list the piers and urns. The appeal also fails, therefore, on ground (a).

Appeal A on ground (e) (3) and Appeal B ***The main issues***

42. The main issues in both appeals are the effects of the removal of the piers and urns on their integrity and character as listed buildings; on their setting(s) and on their features of special historic and architectural interest.

The cases for the appellant and the LPA

43. The appellant acknowledges that if the piers and urns are found to be '*listed buildings*' then LBC would have been required for their removal and that this amounted to demolition. However, it is contended that that this was a demolition which did not affect or harm their special interest. It is indicated that the piers and finials remained intact and, having been sold for a considerable sum, they would now have a new owner who would '*cherish them*'.

44. It is further contended that any '*special interest*' would be in the items themselves rather than where they were located. As recent additions to the Idlicote grounds it is considered that their interest was not at all based on their setting. Referring to the duty under section 16(2) of the PLBCAA, the appellant considers that since the '*buildings*' special interest is unaffected by their removal, they have been duly '*preserved*'.

45. The NPPF is also referred to and it is contended, again, that the significance lay in the objects themselves. Furthermore, it is argued that if any harm is caused, it is less than substantial since the significance of the objects survives with them. Due to their short and '*coincidental*' presence at Idlicote it is not considered that their removal has had any significant effect on the setting of the house.

46. In further support of this ground of appeal the appellant reflects on the reality of the position, indicating that he and his agents were unaware of the listings of such recently arrived chattels and that EH had been made aware of the intended sale and made no objection. The items have now been sold to an '*anonymous*' buyer and there is no reason to believe that they are still within the UK. It is indicated that even if the owner could be identified they could not be compelled to return the piers and urns. It is not considered to be realistic that they could be returned. It is, however, considered to be realistic that they will be preserved.

47. The LPA stands by its reason for refusing LBC for the removal of the listed piers and urns. The refusal notice refers to the removal as equating to demolition and that; as a result, substantial harm has been caused to the historic and architectural significance of these heritage assets. It refers to the NPPF and that such substantial harm should be '*exceptional*' and that '*substantial*' public benefit would be needed to outweigh the harm. It is stressed that the appellant has failed to demonstrate any such benefits and that the removal was not justified.

Assessment

48. Section 10 of the PLBCAA prescribes the form and content for applications for LBC. For England the procedures for making and determining applications are prescribed by the Planning (Listed Buildings and Conservation Areas) Regulations 1990 as amended and applications must include items specified in section 10(2)(a) to (c). These require sufficient particulars to identify the listed building (10(2)(a)); such other plans and drawings to describe the works which are subject of the application (10(2)(b)) and other particulars as required by the LPA (10(2)(c)).

49. In the case of '*R (Judge) v First Secretary of State and Middleborough BC [2006] JPL 996*' (already referred to above) it was held that it is plain from sections 7 and 17 of the PLBCAA that LBC can be granted for the relocation of a listed building. In '*R v Leominster District Council Ex p Antique Country Buildings and others [1987] 56 P&CR.240*', it was held that a building does not cease to be a listed building if it is demolished or removed without authorisation.

50. Applying these cases, it follows that the appellant could indeed apply for removal of the piers and urns and that wherever these items are now kept, they remain on the SOS's list. However, in this case, in applying for removal there was no indication of

the new location of the piers and urns. Neither at the time of the LBC application, nor within the appeal process have any details been provided to indicate the whereabouts of the '*listed buildings*'. I consider, therefore, that despite the fact that the LPA determined the application, the requirements of section 10(2)(b) of the PLBCAA were not complied with.

51. In the case of '*R. (Wilson Dyer Gough) v SOS CLG [2008] EWHC 3188*', it was held that were an application to be lodged, on the basis of the provision of plans as to what was to be removed or altered, without those plans showing how the building would be presented after those changes had been carried out, it would fail the section 10(2)(b) test. This is because it would not include the necessary drawings (or information) and because it would be impossible for a decision-maker to discharge the statutory duty under section 16(2) of the PLBCAA. There would be no necessary information on which to have '*special regard*' to the desirability of preserving the building or its setting or any features of special or historic interest which it possesses.

52. This is exactly the situation here with the decision-makers (first the LPA and now in these appeals) being unable to assess whether or not the two '*listed buildings*' have been preserved. I therefore agree with the LPA and find it inconceivable that LBC can be countenanced for the total removal of the piers and urns to an unknown and unspecified location (or possibly more than one location). I also agree with the LPA that to grant LBC for such works carried out would create an extremely dangerous precedent, potentially endangering the preservation of innumerable other designated heritage assets such as these historic piers and urns.

53. Although the appellant contends that the assets are fully preserved and that there can be confidence in their continued preservation, not only is there a complete lack of evidence to show that this is the case, there would appear (at this stage) to be no way of providing such evidence.

54. On the Appeal A ground (e) and the Appeal B facts, I find that the removal of the piers and urns has affected their integrity and character as '*listed buildings*'. They were removed from the positions in which they were listed to a place unknown; they possessed settings of their own (once listed) which have been completely lost or undone and their special historic and architectural features have been put at risk.

55. Overall I consider that the works carried out cannot be said to have preserved the two '*listed buildings*' and that their total removal (amounting to demolition) is contrary to policy CS8 of the SDCS, which seeks to protect and enhance the historic environment for its inherent value. The works of removal/demolition are also contrary to policies within the NPPF contained within paragraphs 126 to 141. I find that the harm to these historic assets can only be described as being substantial and there are clearly no public benefits which can outweigh the harm caused.

56. I do not consider that LBC should be granted for the removal of the listed piers and urns. I agree with the LPA's reasons for not granting LBC and there can be no justification in granting consent at this appeal stage. Appeal A also fails on ground (e) and Appeal B fails.

Appeal A on ground (i) (4)

57. To be successful on this ground of appeal it must be shown that the steps required by the notice, for the purposes of restoring the character of the '*listed buildings*' to their former state, would not serve that purpose. The argument put forward by the appellant is that he is not in a position to put back the piers and urns in their former positions at Idlicote because he is no longer in possession of the items. It is argued that they have been exported outside of the UK and that the appellant does

not know whose ownership they are in and nor is he aware of their whereabouts. He simply states, therefore, that the restoration, in practice will not occur.

58. Whilst understanding the predicament in which the appellant now finds himself, the question in this case is whether or not the requirement to reinstate both original piers and urns to their positions shown in the Historic England (HE) list description record would restore the character of these '*listed buildings*' to their former state. Clearly if the piers and urns were returned to their respective positions, on either side of the driveway entrance, their character, integrity and settings would be as they were when listed, assuming they had not been altered or damaged in any way.

59. In my view, it cannot be a defence under ground (i) to claim that it is too difficult or impossible to restore the buildings to their former state. As a matter of fact, if the piers and urns could be retrieved then the requirement would be achieved. The LPA has referred to legal action being a possibility of retrieving the items but that would be a matter for the appellant. It is a fact that there is no evidence (submitted in relation to these appeals) to suggest that any inquiries or investigations, regarding the whereabouts of these heritage assets, have been carried out.

60. In any case, even if successful on this ground it is not normally one which would lead to a quashing of the notice. Grounds (g) to (k) are usually associated with the variation of a LBEN whereby a compliance period or a specific requirement can be altered. None of these scenarios apply in this case. The facts are clear. If the piers and urns were returned to their former positions then their character would be restored to their former state. Appeal A must also fail on this ground.

Other Matters

61. In reaching my conclusions in both appeals, I have taken into account all of the other matters raised by the Council; by and on behalf of the appellant and by interested persons both in support and against the appellant's case. These matters include the full history of the piers and urns (including that set out in the auctioneers catalogue); the detailed appeal statements; the LPA delegated report relating to the LBC application; the HE advice to the LPA; the appellant's supporting statement for the LBC application; the supporting photographic evidence and copies of communications between the appellant, the LPA and others. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal in Appeal A and those in Appeal B. Nor is any other matter of such significance so as to change my decisions that both appeals should fail.

Formal Decisions

62. Appeal A is dismissed on all grounds and the Listed Building Enforcement Notice is upheld. Listed Building Consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990: namely the removal of a pair of limestone piers and surmounting lead urns at Idlicote House, Idlicote, Shipston-on-Stour CV36 5DT.

63. Appeal B is dismissed and Listed Building Consent is refused for the works carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990: namely the removal of a pair of limestone piers and surmounting lead urns at Idlicote House, Idlicote, Shipston-on-Stour CV36 5DT.

Anthony J Wharton

Inspector