

IN THE COMMISSARY COURT OF THE DIOCESE OF CANTERBURY

ASHFORD ST MARY THE VIRGIN

JUDGMENT

1. The Petitioners are the Revd John Mackenzie, Team Rector for Ashford Town and the two Churchwardens, Messrs Jeremy Fox and Alan Stamp. They seek a Faculty in the following terms:

“Faculty for an art work, part of the Ashford Borough Council's Ashford Snowdogs art trail, to be positioned in the churchyard of St Mary's Ashford town centre church between the north entrance gates and the church north door (picture attached). The Snowdog proposed to be in the churchyard is named infinity dog - so named after one of Ashford's leading sons - John Wallis a leading clergyman and mathematician whose father was Vicar of Ashford in 1602. John Wallis is also the name of our Church of England secondary school academy and so roots this particular dog firmly in areas that we would want to celebrate - and outstanding school and Christian leadership.”

2. Some of the background to the proposal is set out in the Petition as follows:

“Ashford Church has had a longstanding partnership arrangement with Ashford Borough Council (ABC), indeed they are parties to an arts trust with has resulted in many fine performers using the church for concerts, plays, and events for a number of years now. The Snowdogs art trail has been a major project for ABC - seeing it as a way to raise the profile of our great town and to help tourists visit more than just our Outlet centre. Ashford Church was delighted to be included in the trail - which places the church firmly at the heart of our town. People are encouraged to follow the trail and as they do to discover and explore important heritage and tourist attractions of the town. This venture is very much a wider community activity that has also involved our local schools, newspaper and businesses- the church is pleased to stand alongside our community in supporting this project.”

3. No consultations have taken place with the Local Planning Authority or any other external bodies.
4. There is one objection to the Petition, from a parishioner, Mr Christopher Cooper. He is an immediate neighbour of the church, living in one of the historic cottages fronting the churchyard.

5. I should now deal with a little more of the background. The Statement of Needs explains that, following a successful Faculty hearing in 2010 and a £1.2m Government growth grant, the church was re-ordered to include provision of performance and exhibition space, broadly, in the western half of the building, with retention of the eastern half of the Church for worship. This partnership was undertaken in collaboration with Ashford Borough Council.
6. The Snowdog project runs from 12/9/18 - 18/11/18 after which the sculptures will be removed to be auctioned to raise funds for the local hospice.
7. Pursuing the objective to “*continue supporting the council in any initiative that increases the footfall into the church*”, the PCC decided to accept the Snowdog. Unfortunately, no faculty petition was made.
8. On 11 September 2018 Mr Cooper drew the attention of the Registry to the arrival of the Snowdog, indicating that an application might need to be made for a Restoration Order.
9. The Petitioners requested me to grant an interim confirmatory faculty. I refused this request on 19 September 2018 because I did not consider that an interim confirmatory faculty was warranted. Now that the formal Petition has been made, I see from the Standard Information Form that the Churchyard is closed. As this fact potentially raises questions about jurisdiction, I asked the Petitioners to inform me whether or not the graveyard is consecrated. Apparently they did not know and suggested that the Registry look in its own records. The Registry staff have done so and confirmed that the churchyard remains consecrated ground. Both pieces of information should have been drawn to my attention, even when requesting an interim faculty. In the event, since I declined to grant the confirmatory faculty sought, there is no need for me to express any view on the potentially difficult questions as to whether the installation (including a concrete plinth) is a ‘building’ for the purposes of s.3 Disused Burial Grounds Act 1884 and the extent of the Court’s powers under s.64 Ecclesiastical Jurisdiction and Care of Churches Measure 2018.¹ Suffice it to say that, to make sure that the commendable partnership with Ashford Borough Council works smoothly, the Church must, in future, ensure that it thinks through the legal implications of proposals first. This applies both to projects inside the church and in the churchyard.
10. The Petitioners confirmed, in response to my question uploaded onto the online system on 2nd November, that the Snowdog was removed after my refusal to grant an interim faculty. They accept that a faculty is required and point out that the project is time limited, so they are now “in danger of missing the boat”. They refer to the Council’s ambitions for the project, described as a “multi-faceted project hitting a number of agendas for the borough, including improving the street scene by turning spaces into place, reconnecting people to the ever growing town, developing community spirit and safety, health and wellbeing through interactive trail app (with downloadable rewards) and of course raising significant amounts of money for charity.” The dogs are described as being individually decorated by local and national artists: they stand mounted on concrete plinths. The end date of installation is 18th November 2018.
11. The Petitioners finally urge:
“Whilst the temporary appearance of a shiny snowdog within a churchyard, closed since 1856, might seem incongruous to a few, the public benefit of putting the

¹ The judgment of the Court of Arches in Christ Church Spitalfields is awaited, in which the confirmatory jurisdiction question will be considered.

churchyard to viable, albeit temporary, use for a worthwhile town project whilst at the same time achieving an aim of the church's mission to share its space for the benefit of the wider community seems to outweigh any perceived harming of the ancient environment. The vast amount of anger engendered in the local community by the ordered removal of the Snowdog following a single complaint, however correct under ecclesiastical law, needs a swift approval of its re-instatement to demonstrate that the church is still aware of meeting the wider needs of that community."

12. Mr Cooper objects to the installation essentially on aesthetic grounds and he regards its presence as incongruous, in the setting of the ancient Grade 1 listed church.
13. The DAC recommend approval.
14. I have seen a photograph of the dog in situ. It is a large, grinning, dark coloured figure made of shiny material, possibly fibreglass, adorned with brightly coloured patterns. I am familiar with the church and churchyard of St Mary's Ashford.
15. Whilst I am neither required nor qualified to pass aesthetic judgements, I agree with Mr Cooper that the form and materials of the Snowdog are incongruous in that they do not relate to or complement their ancient surroundings. To this extent, the installation is harmful to the setting of the Grade 1 listed building. The purpose of the project, however, is to excite surprise and comment. In this it is successful, although Mr Cooper's comments are unfavourable. Given the fact that if I grant a faculty the dog will now be in position for a maximum period of 10 days, I consider that its presence would be so transitory as to make the diminution of the Church's setting insignificant. I set against that the evident enthusiasm for the project of at least some parts of the community, including its democratically elected body, and the desire of the Church to join in with a community project. In my view, these factors outweigh the transitory harm. I therefore propose to grant a time limited faculty, the authorisation to expire on 18th November.
16. In conclusion, I wish to make two further points. First, apparently no thought had been given to the secular planning position; since Ashford Borough Council is the Local Planning Authority and the period proposed is so short, I am assuming that there is no need for secular approval, though this is a point on which there should have been consultation and evidence. Secondly, the partnership between this Church and the Local Authority is very important and I have given it weight in my overall judgment. The Church's relationship with its neighbours is also important and should always be borne carefully in mind when consideration is being given to future civic collaborations. Whilst some neighbours might not always be in sympathy with all initiatives, neighbourly consideration and courtesy should always be shown and are always calculated to help, rather than hinder.
17. The costs of, and occasioned by, this Judgment are to be paid by the Petitioners.



MORAG ELLIS QC

Commissary General

9 November 2018