

Re St Mary the Virgin, Selling

Canterbury Commissary Court: Ellis Com Gen, 1 March 2013

Flags – historic – disposal – Tredington

The Commissary Court of Canterbury granted a petition for the sale to the National Maritime Museum of two flags that had previously hung in a chapel in the parish church. One of the flags, a union jack, had been flown by *HMS Minotaur* at the Battle of Trafalgar; the other, an Austrian ensign, had been taken as a prize from the Spanish ship *Neptuno* during the battle. The flags were introduced in the church in 1930, when a memorial chapel was fitted out by a local family whose ancestor had served on *HMS Minotaur* at the Battle of Trafalgar. The flags were presented when the chapel was dedicated and had hung there until 1994 when, following a deterioration in their condition, they were taken to a specialist conservator for advice. They were then deposited in the treasury of Canterbury Cathedral. The flags were extremely fragile and in need of extensive conservation. The petition sought permission to transfer ownership of the Trafalgar flags to the National Maritime Museum. The Diocesan Advisory Committee advised that the flags were of national significance and that the National Maritime Museum was the appropriate body to conserve them. A large number of letters of objection were received; some were withdrawn once the true nature of the proposals was explained. There were no parties opponent. The Church Buildings Council and a number of specialist bodies were specially notified of the petition. None of them objected in principle to what was proposed but some expressed concerns about public access to the flags. Determining the petition on written representations, the Commissary General held that

- i. The flags were a gift to the parish in 1930;
- ii. Neither the cathedral treasury nor the parish church could provide a suitable long-term home for the flags, neither having facilities for the display or specialist conservation of the flags;
- iii. The union jack would form part of a new special display at the National Maritime Museum, where the public would have free entry.

The credentials of the National Maritime Museum were beyond dispute, the statutory regime under which it operated ensuring that the flags were to be held by it permanently. By contrast, a local museum at Faversham (which expressed an interest in accommodating the flags) had no specialist staff who could restore the flags and was not currently in a position to display them. The disposal of the flags was justified under the criteria identified in *Re St Gregory, Tredington* [1972] Fam 236: it was necessary to ensure the proper care of the flags for the future and to relieve the parish of that responsibility. The proceeds of sale (£175,000 in total) were to be used to establish a charity to benefit local young people,

particularly by providing them with historical education about the Battle of Trafalgar. The Commissary emphasised that her judgment was not intended to set any legal precedent or to provide encouragement to other parishes to dispose of treasures. [Alexander McGregor]

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Re Holy Trinity, Folkestone

Canterbury Commissary Court: Ellis Com Gen, 28 March 2013

Memorial windows – installation – Duffield questions – harm

In considering a petition for the installation of a series of six stained glass windows in memory of a person who had been married in the church, the Commissary General observed that where a such a proposal involved an addition to or adornment of the church it was not necessary for the petitioner to establish ‘exceptionality’ in respect of the character or service of the person to be commemorated: *Re St Mary, Longstock* [2006] 1 WLR 259. As the church was a listed building the proposal was to be assessed in accordance with the framework of questions articulated by the Court of Arches in *Re St Alkmund, Duffield* [2013] 2 WLR 854. The answer to the first of those questions – would the proposals if implemented result in harm to the significance of the church as a building of special architectural or historic interest? – was no. There were good reasons in favour of the proposal and a faculty would be granted. [Alexander McGregor]

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Re St Augustine, Kilburn

London Consistory Court: Seed Ch, 2 April 2013

Telephone masts – planning permission – external appearance

A faculty was sought to erect nine telephone masts in the tower bell chamber of this Grade I listed church. The application was the same as several others in the diocese, of which two also concerned the same local authority planning department. The work proposed replacing lead-covered oak louvres with GRP replicas, a process approved by both English Heritage and the Victorian Society on condition that the original louvres would be reinstalled when the masts were removed. Notice of the work was given to the planning authority, although it was thought that no planning application was required as there was no material change to the building’s appearance. No reply or request for a planning application was received in