

Neutral Citation Number: [2017] ECC Can 1

In the Commissary Court of the Diocese of Canterbury

Faculty No. 747/2017-009119

CHARTHAM : ST MARY

JUDGMENT

1. INTRODUCTION

- 1.1. By their Petition, the Reverend Philip Brown, Dr Robin Slowe and Mr Robert Allen seek authorisation for the installation of security CCTV in the church of St Mary Chartham.
- 1.2. The object of the proposal is to enable the church to be left open during the day.
- 1.3. The particulars are that two cameras are to be installed, one to monitor the entrance with detailed facial recognition and the other to cover most of the remainder of the church with a wide angle lens, both to have low light capability. They would be mounted discreetly on roof timbers and connect to a recorder situated in the upstairs vestry using cabling that can be run discreetly down to low level and then along a route where there is existing mains power cabling. The recorder will run continuously but will over-write itself after a month.
- 1.4. The church is listed at Grade I. A plan is being developed by the Parish supported by funding from the Heritage Lottery to increase community access to the church.
- 1.5. Public notice of the Petition has been given. There are no objections.
- 1.6. I propose to grant the faculty sought, subject to conditions, but take this opportunity to set out some principles that I intend to apply in any further such cases and to explain the conditions which I intend to impose in this one. I am most grateful for the assistance of the Deputy Commissary General, Steven Gasztowicz QC, in considering the topic of CCTV cameras. He has seen this Judgment in draft and agrees with its contents.

2. CCTV CAMERAS – PRINCIPLES

- 2.1. Certain types of CCTV camera usage are the subject of secular legislation in the form of the Protection of Freedoms Act 2012. The Secretary of State has issued guidance, entitled the Surveillance Camera Code of Practice,¹ under S.30 of the 2012 Act. The guidance relates to appropriate and effective use of surveillance camera systems by ‘*relevant authorities*’, defined by s.33 of the Act. Various statutory bodies and officers are included in the statutory definition, but not Parochial Church Councils or any other ecclesiastical bodies. The statutory guidance, however, encourages other operators and users of surveillance camera systems to adopt the code of practice voluntarily. The Code defines a “*System Operator*” as “*person or persons that take a decision to deploy a surveillance system, and/or are responsible for defining its purpose, and/or are responsible for the control of the use or the processing of images or other information obtained by virtue of such system.*” A “*System User*” is defined as “*person or persons who may be employed or contracted by the system operator who have access to live or recorded images or other information obtained by virtue of such a system*”.
- 2.2. It seems to me that, although Church bodies are not subject to the 2012 Act, the definition of System Operator in the guidance is broad enough to include the PCC, the Churchwardens, Incumbent and Petitioners for a relevant Faculty, as well as the person who determines the Petition. System Users may well not be employed in the normal parish context, but somebody within the congregation will have access to the information collected by cameras. Moreover, the Petitioners, or, at any rate, the person or persons in control of the cameras, will be “*data controllers*” for the purposes of the Data Protection Act 1998. The 1998 Act and the guidance issued by the Information Commissioner’s Office² require data to be collected fairly and lawfully, for specified purposes and to be retained for no longer than necessary to achieve the purpose for which it was collected, amongst other matters.
- 2.3. This is the first such petition which I have considered and I am, therefore, issuing this Judgment in order to assist other parishes which may be considering the installation of CCTV. I have not found any other Consistory Court judgments dealing with the topic.
- 2.4. I consider it appropriate to follow the advice of the Government voluntarily and to encourage parishes to adopt the Code and to have regard to the guidance when formulating proposals. Any future petitions for CCTV cameras in this Diocese will be considered in the light of the guidance as well as all other relevant matters. I note that “*Public place*” is defined in the publication in the same terms as in s.16(6) of the Public Order Act 1986

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/282774/SurveillanceCameraCodePractice.pdf

² <https://ico.org.uk/for-organisations/guide-to-data-protection/>

“and is taken to include any highway and any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission”. A church which is open to the public clearly falls within this definition, which is why, as I have said, I think it right to have regard to the Government guidance.

2.5. The guidance is supportive of the use of overt surveillance cameras in a public place whenever that use is: in pursuit of a legitimate aim; necessary to meet a pressing need; proportionate; effective; and compliant with any relevant legal obligations.

2.6. There are twelve guiding principles set out in the Code. They are:

1. *Use of a surveillance camera system must always be for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need.*
2. *The use of a surveillance camera system must take into account its effect on individuals and their privacy, with regular reviews to ensure its use remains justified.*
3. *There must be as much transparency in the use of a surveillance camera system as possible, including a published contact point for access to information and complaints.*
4. *There must be clear responsibility and accountability for all surveillance camera system activities including images and information collected, held and used.*
5. *Clear rules, policies and procedures must be in place before a surveillance camera system is used, and these must be communicated to all who need to comply with them.*
6. *No more images and information should be stored than that which is strictly required for the stated purpose of a surveillance camera system, and such images and information should be deleted once their purposes have been discharged.*
7. *Access to retained images and information should be restricted and there must be clearly defined rules on who can gain access and for what purpose such access is granted; the disclosure of images and information should only*

take place when it is necessary for such a purpose or for law enforcement purposes.

8. *Surveillance camera system operators should consider any approved operational, technical and competency standards relevant to a system and its purpose and work to meet and maintain those standards.*
9. *Surveillance camera system images and information should be subject to appropriate security measures to safeguard against unauthorised access and use.*
10. *There should be effective review and audit mechanisms to ensure legal requirements, policies and standards are complied with in practice, and regular reports should be published.*
11. *When the use of a surveillance camera system is in pursuit of a legitimate aim, and there is a pressing need for its use, it should then be used in the most effective way to support public safety and law enforcement with the aim of processing images and information of evidential value.*
12. *Any information used to support a surveillance camera system which compares against a reference database for matching purposes should be accurate and kept up to date.*

2.7. Particular points to note from the guidance under these twelve headings are:

Legitimate aims may include: the prevention of crime and the protection of morals or the rights and freedoms of others. The purpose should be capable of translation into clearly articulated objectives.

The public's expectations in relation to privacy should be borne in mind, especially in particular places where there is a particular sensitivity.

An operator should have an effective procedure for handling concerns and complaints from individuals.

It is good practice to have a designated individual responsible for the operation of the system.

It is good practice that organisations ensure the reliability of staff having access to personal data, including images obtained by surveillance cameras.

Images should not be kept for longer than necessary.

There should be adequate security for the stored images.

- 2.8. Translating these principles into the church context, I consider that, whilst in principle, CCTV cameras can pursue the proportionate aims of deterring crime and desecration and increasing personal security, the siting and scope of camera equipment are particularly important. Areas set aside for private devotions seem to me to fall within the especially sensitive category where one would not expect to be filmed while praying. Similarly, in any churches where sacramental Confession or other ministries of individual pastoral support, such as healing, are practised, there should be no filming in the part or parts of the church set aside for such purposes. There should be no need for cameras to be in use during any form of service, whether regular worship or occasional offices. With regard to the latter, funerals and baptisms, in particular, are examples of occasions on which people are likely to be very sensitive.
- 2.9. On the administrative side, it is obvious good sense that there should be identified person(s) responsible for the security of the equipment and the data collected, as well as available to deal with any complaints about the equipment. Moreover, there should be a discreet notice informing members of the public that CCTV cameras are in use in the church, for what purposes and when they will and will not be in operation.

3. THIS PETITION

- 3.1. In this case, the clearly articulated purpose behind the proposed installation is to enable the church to be opened to the public. Having the cameras is reasonably thought to reduce the risks of theft, vandalism and/or desecration and to enable evidence to be provided should such things occur. Making the church available in this way is a worthy aim, both in terms of furthering its mission by, literally, opening its doors, and in terms of making a nationally significant heritage building accessible to those who wish to enjoy its historic and aesthetic attributes. Clearly, it is important to protect the building as a spiritual resource and as a designated heritage asset. In general terms, therefore, the proposal satisfies the proportionality principles which underpin the faculty jurisdiction and the secular guidance.
- 3.2. St Mary's Chartham is a Grade I listed building, with the following description:

"The church was built between 1285 and circa 1305 except for the tower which is later C14. The whole was restored by GE Street in 1875. Large cruciform building with west tower and south porch. Built of flint with stone dressings and tiled roof. C15 roof with

crossing covered by diagonal timber arches with a boss of oak leaves. Transcripts with very fine example of windows with Kentish tracery. Stained glass of circa 1294 in the chancel. Fine brass to Sir Robert de Septvans d.1306 one of the oldest in the country and C18 wall monuments including works by Rysbrack and Scheemakers. The churchyard contains C18 headstones with skull, cherub, hourglass and anchor motifs.”

- 3.3. I am required to consider the potential effects of the proposal upon the significance of the listed building: see In re St John the Baptist, Penshurst [2015] Court of Arches paras 21-22. The DAC have advised that, in their opinion, it would not be likely to affect the character of the church as a building of special architectural or historic interest.
- 3.4. Provided the DAC’s recommendation to the effect that the final details of siting – and I would include within that, method of fixing – on the roof timbers is followed, I consider that it should be possible to install the cameras without harm to the listed building. I would expect the diagonal timber arches mentioned in the listing description to be avoided and less sensitive timbers to be utilised. There is no reason for thinking that harm to heritage significance could arise in any other respect. I therefore answer the first Duffield/Penshurst question in the negative. The presumption referred to in Question 2 is, in my opinion, easily rebutted by the advantages of security measures enabling the church to be opened to the public, both as a spiritual resource, but also as part of the national heritage. CCTV cameras would help to reduce the risks inherent in allowing otherwise unsupervised public access, in the interests of preserving the fabric and significance of the listed building and its contents. The other questions, therefore, do not arise. I have considered carefully whether the overall character and function of the church as a place of prayer and worship would be adversely affected by the proposed installation and concluded that, subject to the conditions which I propose to impose, there should be no diminution of the church’s primary purpose.
- 3.5. In accordance with the principles set out in Section 2, I consider that the installation should ensure that any parts of the church set aside for private prayer and so forth are avoided from the scope of the lens and that the cameras should be switched off during services. I note that images are recorded over after four weeks. I have reviewed this period carefully in the light of Data Protection principles and the Code’s concern to prevent unnecessary data storage; the ICO advises against a blanket period of five weeks’ retention. I consider that a four week period is proportionate to the aim here because damage and theft in the church, where recordings could be of evidential value, will not always be spotted immediately; the situation is readily distinguishable, for example, from cases where CCTV is installed to deter and detect public order disturbances in public houses and spaces. Since, as I understand it, the machines over-record automatically, a condition requiring this will be automatically fulfilled. I am including

conditions requiring there to be a suitable person responsible for the machinery and data held in it, for notice to be given of the use of the cameras and of the person to contact in the event of complaints or questions. Although I do not make it a condition, I expect that this person will familiarise him or herself with the Code and the guidance published by the Surveillance Camera Commissioner and the Information Commissioner's Office and keep up to date with such publications.

A handwritten signature in black ink, appearing to read 'M. Ellis', followed by a long horizontal line extending to the right.

MORAG ELLIS QC
22 November 2017