

**Neutral Citation Number: [2024] ECC Lon 3**

**IN THE CONSISTORY COURT**

**DIOCESE OF LONDON**

**In the matter of  
DOVEHOUSE GREEN, CHELSEA – faculty reference 4506**

**-and-**

**In the matter of  
ST LUKE'S CHELSEA**

**-and-**

**In the matter of  
THE PETITION OF THE REVEREND BRIAN LEATHARD (RECTOR OF ST LUKE'S  
CHELSEA – “THE RECTOR”) AND SARAH BRION (SENIOR PROJECT  
MANAGER ROYAL BOROUGH OF KENSINGTON AND CHELSEA COUNCIL –  
“KC”) AND THE OBJECTION OF “B” TO BE TAKEN INTO ACCOUNT**

**-and-**

**In the matter of  
A PROPOSAL TO PLACE A SCULPTURE AND INFORMATION STAND WITHIN  
THE PUBLIC GARDENS OF DOVEHOUSE GREEN**

**Judgment of the Chancellor**

**April 22, 2024**

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Etherington Ch:

1. This is a petition to erect a sculpture created by the late Sir Eduardo Paolozzi (1924-2005) depicting the head of Oscar Wilde. Sir Edward was Her Majesty Queen Elizabeth II's Sculptor in Ordinary for Scotland between 1985 and 2005 and is a highly regarded British artist of (primarily) the 20<sup>th</sup> century. The Petitioners remind me that he created the bronze figure of Sir Isaac Newton at the entrance to the British Library as well as other works that I need not rehearse here. He moved into his studio in Dovehouse Street in 1959 and taught at the Royal College of Art on Kensington Gore. He was a regular figure at the Chelsea Arts Club. He had very substantial connections with the area. He would have been 100 years old this year.

2. The proposal is to install this sculpture and plinth at the southern end of Dovehouse Green on the King's Road side. The Petitioners say that it will not dominate the location or overshadow the surroundings. Given its height, they say that it will not obscure views into Dovehouse Green from neighbouring properties. In any event, the sculpture will require secular planning permission where any objections of that kind can be considered. The works will be carried out within a secure compound and the remaining space will be open and usable.
3. Dovehouse Green is a public garden managed by KC as public open space. KC wishes to support access to open space and opportunities for exercise and recreation. The funding for the project comes from KC's contributions for public art, funding applied for and granted to local residents and an element of public subscription. The maintenance and insurance will be met by KC. The need described emphasises the enhancement of open space through this work of art and the provision of opportunities for the public to access and "interact" with artwork in a public open space.
4. KC tells me that there has been public consultation via *The Chelsea Society Annual Report*, *The Oscar Wilde Society Magazine*, and *The Parish Magazine* and there has, of course been public notice as part of the faculty petition process. A "comments consultation" was held at St Luke's and all comments (seven of them) were in favour of the sculpture being installed. It is said that attention has been given to limiting the carbon footprint in the installation process.
5. The sculpture is that of a head and shoulders lying on its side with an inscription relating to Wilde on the reverse. It has a maximum height of 2 metres (roughly 6 ½ feet). Its depth is 2.3 metres and its width is 3.2 metres (so over 9 feet). It will be placed on a plinth.
6. The base of the sculpture is apparently meant to be climbed on and this will be allowed. If more adventurous climbing is found to be a problem then a notice will be erected advising people not to climb on parts of it. KC needs to be sure both that this usage has been properly assessed for risk and also must inform its insurers of this proposed use. There are a good number of young adolescents, and even children, who can be seen in this area and who are without adult supervision. I am not going to insist, if I grant the faculty, that railings should be placed around it to protect it from damage or defacement or to protect others from the risk of injury because the responsibility for this will fall on KC. Thought must also be given in a risk assessment as to how the piece will interact with those who have sight or mobility issues.
7. Dovehouse Green, although a public garden not visibly attached to a church, is consecrated ground and therefore falls under the jurisdiction of this court.
8. The reason it is consecrated ground is interesting. It began life as consecrated ground in the form of the King's Road burial ground to serve the Parish Church of St Luke, Chelsea, having been given to the parish in 1733 by Sir Hans Sloane (1660-1753). The burial ground was consecrated in 1736 and later enlarged in

1790. It became known as the Old Burial Ground after provision for parish burials was supplemented in 1813 by the opening of a new burial ground, now the site of St Luke's Church and Gardens. In 1882 a mortuary was constructed and the remaining ground was laid out as a garden for the recreational use of inmates of the adjoining workhouse.

9. After war damage in World War Two, the garden was developed with a small part opened to the public. Most (but not all) of the gravestones were removed. The mortuary was demolished. In 1977 it was renamed "Dovehouse Green" and relandscaped for the Silver Jubilee of Queen Elizabeth II. The landscaping included cruciform paths and areas of grass but it was largely paved to the King's Road boundary. It contained an obelisk, some tombstones on the perimeter and seating. In 2003 it was again refurbished for the Queen's Golden Jubilee and now has Victorian-style lighting columns and lanterns, York stone paths and traditional park benches. In 2022 the gardens were refurbished once more. The work involved the lifting and relaying of the York stone paving area at the front of the King's Road, a new path, benches and new bollard lighting to the shrub beds and planted areas. The site has open access from the King's Road and is bordered by a boundary wall on its western boundary. I am familiar with the space.
10. The focus of the petition is primarily to commemorate Sir Eduardo's centenary by installing one of his works, one which depicts Oscar Wilde, and is not primarily to celebrate the artistic contribution of Wilde although he too had a substantial connection to the Royal Borough, which link had its controversial aspects.
11. I granted initially a faculty *nisi* dependent upon whether there were objections.
12. One person objected to the proposed works following public notice. This person was offered the opportunity of joining the proceedings as a Party Opponent or electing not to do so but requesting that his views were taken into account by the court. The person concerned did not in fact respond to the written communication from the Registry and is not therefore a Party Opponent. I will deem him to wish me to take his views into account in reaching my decision. I shall refer to him as "B".
13. B has attempted to place a restriction on what he has said to the court being placed on the internet or any website. Generally speaking, Objectors and Parties Opponent are not entitled to try and place restrictions on the court in the publication of its judgments which may appear, *inter alia*, online. Naturally, the court will endeavour where possible to anonymise the identity of a person where it might reasonably be thought unnecessary to publish it given the nature of the proceedings – for instance a petition about the burial of a child or between parties who are estranged or a number of other examples where it is desirable to protect the privacy of people and there is no public interest in doing otherwise.
14. B has not indicated the precise reasons why he does not want the court to publish online what he has written but I suspect that his fears may fall into a

rather less persuasive rationale than the types of concern mentioned in paragraph 13 above. I appreciate that when someone expresses strong views publicly in the modern age that person may be concerned that online publication will involve a disproportionate backlash online from others.

15. The balance, in my judgment, falls in favour of acceding to B's request because I would not wish someone to feel inhibited in objecting to a proposal in a faculty petition because of fears about online intimidation. In these circumstances, and since I have no way of preventing (and no wish to prevent) the contents of this judgment being placed online, I am restricted in analysing the detail of B's objection in this judgment lest the particular way in which he expresses himself may lead to his identification. I have, therefore, confined myself to dealing with the generality of his objections.
16. I have read carefully a number of times what he has written and I accept he is expressing views that he holds sincerely. He also prays in aid the views of others. None of these people have written in to object – which they were all perfectly entitled to do – and I am not able to take their views into account as I have no way of assessing them fairly as to (a) the strength of their views (b) the cogency of their objections (c) their interest in the petition and (d) the context in which they said what B says they said to him.
17. Broadly speaking, and in order of relevance to this court, B objects to the sculpture in strong terms as unacceptable because he claims that (a) it has not been the subject of proper consultation or public notice (b) it is aesthetically unacceptable in the sense of being artistic brutalism from an earlier era (c) the moral character of its subject (Oscar Wilde) makes its location in consecrated ground offensive (d) the work of Wilde is essentially lightweight and of no real artistic significance (e) it will damage the garden as a place of public open space by being too large and cumbersome and poorly sited and because (f) KC should not be contributing public money to the project *per se* and additionally has a bad track record in its use of public funds.
18. Objections (a) (b) (c) (d) and to an extent (e) are matters for this court, although (e) is more directly a matter for the planning application. The complaints set out at (f) are a matter between B and KC.
19. The Petitioners (in particular KC) deny that the project has not been the subject of any, or any proper, consultation, as alleged at (a) and list articles produced for various interest groups, including the Parish Magazine, and say that consultation was held at St Luke's. They add that the application for planning permission will involve further consultation. In respect of (b) they point out that the work is original and was an unfinished piece of work, cast after the artist's death. In respect of (c) they point out that Wilde was posthumously pardoned in 2017. As to (d) they make no comment. With regard to (e) they say that the location of the sculpture will provide a focal point in an area that currently has a large expanse of paving. The interpretation sign, they say, provides the public with information about both the artist and the subject and they add that such a sign was requested by the Diocesan Advisory Committee ("DAC"). They do not comment on the objections at (f).

20. I do not find there to be any force in the objection at (a). If there was any objection to the location at which the plans were able to be examined it could have been notified to the court which has the power to specify where such notice must be given but, in any event, B clearly negotiated the difficulties he experienced as, from what he said, did others and therefore his (and their) right to comment on the proposals was not prejudiced.
21. The objection which B raises at (b) clearly enters into a territory that has both objective and subjective features. Objectively, Sir Eduardo's work is both significant and recognised. He has substantial connections with the borough. As far as the subjective element is concerned, I accept that his work will doubtless divide opinion. I have to take into account that the Petitioners have engaged in consultation and will face a planning application and that there is only one person who has felt sufficiently roused to object to it on aesthetic grounds. Art of any era has often been received initially with less praise than has ultimately been bestowed upon it. Some music, for instance, by composers now highly regarded caused audiences to protest or walk out during the first performances. My suspicion is that this work will have its admirers and detractors but it is clearly a substantial sculpture by a highly regarded artist and there is no basis for refusing it on aesthetic grounds. Its location is a public open space and detached (for the reasons already given) from St Luke's itself. As far as the information stand is concerned, I accept the view of the DAC that it should be there to help inform members of the public of why the sculpture is there, its creator and its subject matter. I do not consider that the questions raised in *Re St Alkmund, Duffield* [2013] Fam 158 apply, namely whether the proposals, if implemented, would result in harm to the significance of the church as a building of special architectural or historical interest. In the unlikely event that *Duffield* does extend to detached areas of former burial grounds that are now public open space I would unhesitatingly find that no harm to the applicable significance of the area would be caused and the reason for the installation is sufficient to justify its presence.
22. The objection at (c) relates to whether it is appropriate for a representation of Wilde to be permitted in an area of consecrated ground. This objection is greatly and, in some respects, absurdly over-stated in my judgment. I will not say more than this in view of B's concern about publicity.
23. B also casts doubt at objection (d) on the quality of Wilde's literary reputation. Whereas it is certainly the case that Wilde's style of writing is one that does not appeal to all tastes, he had a very successful reputation as a playwright until his trials and convictions and has in the more modern era received acclaim both for his plays and his other published work. It is not my function to act as a literary critic. I am, however, satisfied that his work is generally considered to be of much higher quality than is alleged by B. It is also important to remember that the sculpture is being placed on Dovehouse Green primarily in recognition of Sir Eduardo rather than Wilde.
24. I do not see much force, from the standpoint of the consistory court and the matters I have to judge, in B's objections at (e) as to the location of the sculpture

and interpretation stand on Dovehouse Green but they are matters more properly considered by the process of planning permission. The consistory court could consider acting if the proposal threatened the architectural or historical significance of the church building of St Luke's, but that is not the case here.

25. The final objection (f) relates to various criticisms of KC's policies (including budgetary ones). These are not matters that this court can properly take into account. Generally speaking, spending decisions are only relevant to the ecclesiastical court if they are decisions of a parochial church council and the cost of the proposals imperils the meeting of a church's financial obligations as and when they fall due. The objection here is a matter between B and KC.

26. I therefore conclude that this faculty should be granted, subject to the Conditions I impose below. These Conditions arise from the provisos of the DAC who recommend that I grant the faculty and from my own conclusions.

27. This permission is, however, dependent upon the grant of secular planning permission and compliance with any conditions granted under that process.

28. Although I have decided on this occasion to grant the faculty prior to the grant of planning permission, may I make clear that normally planning permission should be sought first.

29. I make no orders as to costs.

## CONDITIONS

1. If charnel is found during the works, it should be reinterred according to the Incumbent's directions.
2. If articulated burials or graveyard features are discovered, then work should halt until the Archdeacon has been consulted (who may wish to refer the problem to the court).
3. The insurer must be informed of the potential for any climbing upon the structure by adults and children (whether permitted or not) and a thorough risk assessment of this aspect must be undertaken by KC.
4. KC must also conduct a thorough risk assessment of the potential dangers of those with mobility problems or other restrictions (such as blindness or poor vision) colliding with either the structure or the information stand and should this require any modification of the structure (such as railings etc) then an application must be made for variation of this faculty.
5. In the event of damage to the structure (whether by vandalism or any other mechanism) KC must remedy it as soon as is reasonably practicable and within a maximum of 7 days from discovery unless the Archdeacon has for good reason permitted a longer period.