Brookwood Cemetery Act 1975

AN ACT

TO

Empower Brookwood Cemetery Limited to dispose of certain lands belonging to the said Company not required for cemetery purposes free from restrictions; to confer powers on the Company with respect to agreements with local authorities and others; and for other purposes.

C[illegible]pter xxxv. **12th November 1975.**

[Local]

La Reyne le veult.

ELIZABETH II

1975 CHAPTER xxxv

An Act to empower Brookwood Cemetery Limited to dispose of certain lands belonging to the said Company not required for cemetery purposes free from restrictions; to confer powers on the Company with respect to agreements with local authorities and others; and for other purposes. [12th November 1975]

WHEREAS—

(1) Brookwood Cemetery Limited (hereinafter called "the Company") is a company which was originally incorporated by the London Necropolis and National Mausoleum Act 1852 (hereinafter called "the Act of 1852") by the name of "The London Necropolis and National Mausoleum Company" subsequently registered and reincorporated under Part IX of the Companies Act 1929 by the name of "London Necropolis Company Limited" and now incorporated under the name of "Brookwood Cemetery Limited" as a company limited by shares: 1852 c. cxlix. 1929 c. 23.

(2) By the Act of 1852 and other enactments the Company was empowered to acquire land make establish and maintain a cemetery crematorium and other works and premises and to exercise other powers for the purpose of or in connection with the burial of the dead and the cremation of human remains:

(3) The Company has for many years in pursuance of the powers conferred by the said Acts carried on a cemetery in the borough of Woking in the county of Surrey and owns a large area of land comprising the site of the said cemetery:

1869 c. iii. (4) By section 2 of the London Necropolis and National Mausoleum Act 1869 it was enacted that the Company should not sell lease or exchange any of the lands described in the Schedule to the said Act of 1869 and should not erect or cause or permit or suffer to be erected on such lands any buildings other than such as might be required for the purposes of the Act of 1852 or the residence of the officers and servants of the Company the whole of the said lands being specially retained for present and future cemetery purposes:

1956 c. lxviii. (5) By the London Necropolis Act 1956 powers were conferred upon the London Necropolis Company Limited with respect, inter alia, to the disposal of lands amounting to 165 acres or thereabouts:

(6) The Company has laid out and enclosed for the purposes of the Act of 1852 sufficient space to meet the estimated requirements of the Company for the next five hundred years and the lands amounting to 117 acres or thereabouts shown coloured pink, blue and yellow on the signed plan which form part of the lands comprised in the Schedule to the said Act of 1869 are not required by the Company for the purposes aforesaid and it is expedient that the ancient restrictions upon sale, lease or exchange should be removed and that the Company should have power to dispose of such lands to enable the Company to provide a proper standard of maintenance and to continue its programme of restoration and improvement of the cemetery:

(7) It is expedient that the Company should have power to enter into agreements with local authorities and others having power to provide cemeteries and crematoria and with the Commonwealth War Graves Commission as is in this Act provided:

(8) It is expedient that the other provisions contained in this Act should be enacted:

(9) The objects of this Act cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Brookwood Cemetery Act 1975. Short title.

2.—(1) In this Act unless the context otherwise requires— Interpretation.

" Act of 1971 " means the Town and Country Planning Act 1971; 1971 c. 78.

" Company " means Brookwood Cemetery Limited;

" council " means the Woking Borough Council;

" scheduled lands " means the lands shown coloured pink, blue and yellow on the signed plan;

" signed plan " means the plan of which three copies have been signed by the Right Honourable the Earl of Listowel the chairman of the committee of the House of Lords to whom the Bill for this Act was referred and deposited respectively at—

(*a*) the office of the Clerk of the Parliaments;

(*b*) the Private Bill Office, House of Commons; and

(*c*) the offices of the Company at Brookwood Cemetery, Cemetery Pales, Brookwood, Surrey.

(2) Except where the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by and by virtue of any subsequent enactment including this Act.

3.—(1) Notwithstanding anything in any enactment the Company may dispose of the scheduled lands or any part thereof or any easement, right or privilege of any kind over or in relation thereto: Power to dispose of scheduled lands.

Provided that—

(*a*) the Company shall not dispose of the scheduled lands or any part thereof for less than the current market value;

(*b*) before completing a disposal of the scheduled lands or any part thereof or of any interest therein the Company shall give notice in writing of such disposal to the

council specifying the proposed date thereof, the amount of the capital moneys arising thereon and identifying the land comprised therein.

(2) (*a*) The Company shall provide a fund, which shall be applied in accordance with the provisions of this subsection by setting aside—

(i) before the expiration of fourteen days commencing with the date of completion of a disposal of any part of the scheduled lands or of any interest therein, a sum equivalent to the amount (if any) by which the aggregate of the capital moneys (as stated in the instrument of disposition) arising on such disposal and on any previous such disposal exceeds the sum of the book values of the scheduled lands; and

(ii) before the expiration of one year commencing with the date of any such disposal, and before the expiration of each successive year, a sum equivalent to $18\frac{1}{2}$ per centum of the capital moneys (as stated in the instrument of disposition) arising on such disposal.

(*b*) (i) If the Company fail to set aside any sum in accordance with paragraph (*a*) of this subsection the council may recover such sum as a simple contract debt from the Company, and such sum until recovered by the council shall be a charge on all estates and interests held by the Company at the expiration of the period for setting aside such sum in the land shown coloured green on the signed plan and in the scheduled lands.

(ii) Any sum recovered by the council under this paragraph shall be paid into and form part of their general rate fund and the council shall apply sums therefrom not exceeding the aggregate sum so paid into the general rate fund to the purposes specified in sub-paragraph (*d*) hereof if the Company shall afford the council facilities to enable them to fulfil such purposes.

(*c*) The obligation imposed on the Company to set aside the sum referred to in sub-paragraph (ii) of paragraph (*a*) of this subsection shall not have effect during any period in which the Company do not derive either directly or indirectly any income from the cemetery and burial grounds shown coloured green as aforesaid.

(*d*) The fund provided under this subsection and any income arising therefrom shall be applied in or towards any payment of the cost of improving or restoring the Company's cemetery and burial grounds shown coloured green as aforesaid or any part thereof or to any other purpose which the council approve and the council may give reasonable directions as to the application and investment of the fund.

(*e*) The Company shall, at the expiration of one year from the provision of the fund referred to in paragraph (*a*) of this subsection and at the end of each successive year cause accounts to be drawn up showing the state of the fund at the end of the year concerned and all income thereof and expenditure thereout during that year and the purposes to which the fund has been applied and a copy of those accounts which shall be audited by a person qualified for appointment as an auditor of a company under section 161 of the Companies Act 1948 shall be delivered to the council not later than three months after the end of the year concerned. 1948 c. 38.

(*f*) If the Company cease to operate their cemetery and burial grounds shown coloured green as aforesaid, they shall, if the council so direct them, transfer the fund to such person or body operating all or part of the said cemetery and burial grounds as the council reasonably think fit and the council may give reasonable direction as to the future application of the fund.

(3) Section 277 of the Public Health Act 1936 shall have effect as if the purpose therein referred to included the purpose of ascertaining whether there has been any failure to comply with subsection (2) of this section and in its application for the purpose included by this subsection, the said section 277 shall have effect as if— 1936 c. 49.

(*a*) for references to any premises, there were substituted references to any part of the scheduled lands or of the land shown coloured green on the signed plan;

(*b*) the occupier of any premises and any person directly or indirectly receiving rent in respect of any premises, might be required in addition to stating his own interest therein to state the date the purchase of his own interest was completed and the capital moneys arising thereon;

(*c*) for the fine not exceeding five pounds there were substituted a fine not exceeding one hundred pounds.

(4) Any difference arising between the Company and the council under subsection (2) of this section (other than a difference as to the construction of that subsection) shall be referred to a single arbitrator to be agreed between the parties or failing such agreement to be appointed by the President for the time being of the Chartered Institute of Public Finance and Accountancy.

(5) In this section the expression " the book values of the scheduled lands " means the book values of those lands as shown in the audited accounts of the Company as at 31st December 1973.

(6) The Secretary of State may by order made by statutory instrument on the application of the Company and the council direct that the foregoing provisions of this section (other than subsection (1)) shall cease to have effect.

Discharge of trusts and restrictions affecting scheduled lands and saving for private rights.

4.—(1) As from the passing of this Act, the scheduled lands shall be freed and discharged from all trusts, uses, obligations, disabilities and restrictions whatsoever (including, as respects any consecrated land, the effects of consecration) which immediately before the passing thereof attached to the said lands and from all other trusts, uses, obligations, disabilities and restrictions whatsoever which attached to the said lands or any part thereof immediately before the passing of this Act by reason of the said lands or any part thereof being a disused burial ground or otherwise:

Provided that nothing in this Act shall operate to affect prejudicially any private right or easement (not being a right in respect of a grave) over the said lands or any part thereof which attached thereto immediately before the passing of this Act.

(2) Any person who at the date of the passing of this Act possesses a right of interment in a grave in the scheduled lands, and whose right is extinguished by virtue of the provisions of the foregoing subsection, shall (in pursuance of an application in writing made by him to the Company for the purpose) be entitled to be paid compensation by the Company for the extinction of that right, and such compensation shall, in default of agreement, be determined in accordance with the provisions of the Land Compensation Act 1961:

1961 c. 33.

Provided that no compensation shall be payable to any person in pursuance of the provisions of this section in respect of more than one right of interment.

Scheduled lands freed from effects of Disused Burial Grounds Act 1884 and consecration.

1884 c. 72.

5.—(1) Notwithstanding anything contained in any enactment, but subject to the provisions of this Act, it shall be lawful at any time after the passing of this Act to use, deal with or dispose of the scheduled lands or any part thereof for any purpose in like manner as if no part thereof had ever been consecrated or used or set apart for the purpose of the burial of human remains or had ever been or formed part of a cemetery.

(2) (*a*) As from the passing of this Act the lands shown coloured pink on the signed plan shall not be used otherwise than as a cemetery or as an open space.

(*b*) No building shall as from the passing of this Act be erected or placed in or on the lands shown coloured pink on the signed plan:

Provided that nothing in this paragraph shall prevent—

(i) the erection or placing in or on the said lands of such buildings (including conveniences, drinking fountains, fences, gates, lights, pavilions, railings, seats and shelters) as may be approved by the council and as are ancillary to the laying out or use of all or any part of the said lands as a park, heath, recreation ground, sports ground, pleasure ground, garden, walk or ornamental enclosure;

(ii) the performance or exercise by any highway authority, local authority, water authority or electricity or gas undertaker of any duties or powers imposed or conferred on them by or under any enactment.

(*c*) In this subsection the expression " open space " has the meaning assigned thereto by the Open Spaces Act 1906. 1906 c. 25.

(3) (*a*) Except with the written consent of the council, the buildings and other land—

(i) shown coloured blue on the signed plan shall not be used otherwise than for a monumental stonemason's works;

(ii) shown coloured yellow on the signed plan shall not be used otherwise than for office purposes.

(*b*) (i) The consent of the council as aforesaid to any other use of the said buildings and other land shown coloured blue on the signed plan shall not be unreasonably withheld and any difference which may arise between the Company or the owner or occupier for the time being of the said buildings and other land or any part thereof, and the council as to whether such consent has been unreasonably withheld shall be referred to a single arbitrator to be agreed between the parties or failing such agreement to be appointed by the President of the Royal Town Planning Institute.

(ii) The arbitrator referred to in sub-paragraph (i) of this paragraph shall not find that the council have unreasonably withheld their consent if, in his opinion, such other use would or might be more detrimental to the character or amenities of the surrounding area than use for a monumental stonemason's works.

(iii) If on a reference to arbitration as aforesaid the arbitrator determines that the council's consent has been unreasonably withheld then such consent shall be deemed to have been given on the date of the arbitrator's determination.

(*c*) The foregoing provisions of this subsection shall continue to apply to the buildings and other land mentioned in paragraph (*a*) of this subsection notwithstanding that the council may have given or are deemed to have given their consent to a

change of use from the uses therein mentioned but in their continued application those provisions shall have effect as if for those uses there were substituted the uses to which those buildings and other land are for the time being put with the council's consent.

(*d*) Except with the written consent of the council, which may be given on more than one occasion, the buildings on the lands shown coloured blue and yellow respectively on the signed plan, at the passing of this Act, shall not be altered or extended nor shall any buildings be erected in place thereof or in addition thereto on those lands, if there would result from such alteration, extension or erection an aggregate floor space exceeding in the case of the land shown coloured blue 4,475 square feet and in the case of the land shown coloured yellow, 2,870 square feet.

(*e*) In this subsection—

"erected" includes re-erected and "erection" shall be construed accordingly;

"office purposes" includes the purposes of administration, clerical work, handling money, telephone and telegraph operating and the operation of computers; and

"clerical work" includes writing, bookkeeping, sorting papers, filing, typing, duplicating, punching cards or tapes, machine calculating, drawing and the editorial preparation of matter for publication.

(4) In this section—

"building" includes any structure whether temporary or movable.

Removal of human remains from scheduled lands.

6.—(1) Before any additional building is erected on any part of the scheduled lands in which the remains of any deceased person may be found to have been interred or before any such part of the scheduled lands is used for any purpose other than as a burial ground, the Company shall remove or cause to be removed from such part of the scheduled lands the remains of any such person and may cause such remains to be removed to and reinterred in any consecrated burial ground or cemetery in which burials may legally take place (but in the case of a churchyard only with the consent of the incumbent of the benefice concerned) or be removed to and cremated in any crematorium.

(2) Before proceeding to remove any such remains the Company shall—

(*a*) give notice of their intention so to do by publishing a notice once in each of two successive weeks in a local newspaper circulating in the area of the scheduled lands, with an interval between each publication of not less than six days;

(*b*) display a like notice in a conspicuous place on the scheduled lands and such notice shall have embodied in it the substance of subsections (3), (4), (5), (6), (7), (8) and (9) of this section; and

(*c*) serve a notice thereof upon the owner of the grave or upon the personal representative or relative of a deceased person whose remains are interred therein, if after reasonable enquiry the name and address of the owner, or personal representative or relative of such a person, can be ascertained.

(3) At any time within two months after the first publication of such notice, any person who is a personal representative or relative of any deceased person whose remains are interred in the scheduled lands may give notice in writing to the Company of his intention to undertake the removal of such remains and thereupon he shall be at liberty within two months from the date of such last-mentioned notice, to cause such remains to be removed to and reinterred in any other burial ground or cemetery in which burials may legally take place (but in the case of a churchyard only with the consent of the incumbent of the benefice concerned) or to be removed to and cremated in any crematorium.

(4) If any person giving notice to the Company under subsection (3) of this section fails to satisfy the Company that he is such personal representative or relative as he claims to be, the question shall be determined on the application of either party in a summary manner by the Guildford County Court, who shall have power to make an order specifying who shall remove the remains and as to the payment of the cost of the application.

(5) The expenses of a removal and reinterment or cremation (not exceeding in respect of remains removed from any one grave the sum of seventy-five pounds) shall be defrayed by the Company such sum to be apportioned if necessary equally according to the number of deceased persons whose remains are in the grave.

(6) If within the aforesaid period of two months after the first publication of the notice mentioned in subsection (2) of this section no notice shall have been given to the Company under subsection (3) of this section in respect of the remains in any grave, or if after such last-mentioned notice has been given the person giving it or, as the case may be, the person specified in any order made under subsection (4) of this section fails to comply with a provision of this section, the Company may remove the remains of the deceased person and cause them to be reinterred in such other burial ground or cemetery in which burials may legally take place or cremated in such crematorium as the Company think suitable for the purpose but, in the case of interment in a churchyard, the previous consent of the incumbent of the benefice concerned shall be required.

(7) Upon any removal of remains from the scheduled lands a certificate of removal and reinterment or cremation shall be sent to the Registrar General by the Company giving the dates of removal and reinterment or cremation respectively and identifying the place from which the remains were removed and the place in which they were reinterred or cremated.

(8) Any tombstone relating to the remains of any deceased person removed under this section shall, at the expense of the Company be removed and re-erected at the place of reinterment or cremation of such remains, or at such place as the said county court may direct on the application (if any) of such personal representative or relative as aforesaid or, failing such application, on the application of the Company and the Company shall make good or provide compensation for all damage occasioned to any tombstone by such removal or re-erection and shall cause a record to be made of each tombstone taken from the scheduled lands under this section containing—

(*a*) a copy of the inscription on it; and

(*b*) if it is intended to preserve the tombstone a statement naming the place to which it has been taken;

and shall deposit a copy of the record with the Registrar General:

Provided that in the case of a tombstone in respect of which no application is made by such personal representative or relative as aforesaid it shall not be necessary to re-erect the tombstone if the Company consider that, by reason of its ruinous condition, it is unsuitable for re-erection and any such tombstone may be disposed of in such manner as the Company may direct.

(9) The removal of the remains of any deceased person under this section shall be carried out in accordance with any directions that may be given by the Secretary of State.

(10) For the purposes of this section the expression "the Company" shall mean the Company or the owner in whom the scheduled lands are for the time being vested.

Power to enter into agreements.

7.—(1) As from the passing of this Act it shall be lawful for the Company to enter into agreements with any local authority or other person having power to provide cemeteries and crematoria and with the Commonwealth War Graves Commission and the Royal Hospital Chelsea for the disposal to any such local authority or other person or to the Commission or the said Hospital of the Company's cemetery and burial grounds which are shown coloured green on the signed plan or any part thereof:

Provided—

(i) that all agreements, conveyances, contracts, deeds and other instruments entered into or made with or by the Company which relate to the land so disposed of and which are in force at the passing of this Act shall be as binding and of as full force and effect in every respect against and in favour of the local authority or other person or the Commission or the said Hospital as the case may be to whom the land is disposed of and against or in favour of any local authority or person to whom the land is thereafter disposed of and may be enforced as fully and effectually as if, instead of the Company, that local authority or person or the Commission or the said Hospital as the case may be had been a party thereto or bound thereby or entitled to the benefit thereof; and

(ii) that in the case of a disposal to a person other than a local authority or the Commission or the said Hospital the land so disposed of shall remain subject to all obligations imposed by any enactment in force at the passing of this Act.

(2) Section 5 of the Disused Burial Grounds Act 1884 shall not apply in the case of a disposal under the provisions of this section. 1884 c. 72.

Saving for Town and Country Planning Act 1971. 1971 c. 78.

8. Section 289 of the Act of 1971 (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the Session of 10 & 11 Geo. 6 for authorisation or regulation of development of the land) shall apply to this Act as if it had been passed during that session; and accordingly the Act of 1971 and orders, regulations, rules, schemes and directions made or given thereunder shall apply to development authorised by this Act.

Costs of Act.

9. All costs, charges and expenses of and incidental to the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by the Company.

Ex a.

R.D.

J.P.C.

Peter Henderson

Clerk Parliaments