ELIZABETH II



1966 CHAPTER xviii

An Act to provide for the demolition or disposal of the church of Saint Christopher, Derby, and of the church hall of the church of Saint Peter, Derby, to authorise the sale and use of the sites thereof and of lands appurtenant thereto for other purposes; to authorise the use of the churchyard of the church of Saint Paul, Derby, for other purposes; and for purposes incidental thereto. [3rd August 1966]

WHEREAS the church of Saint Christopher, Derby (hereafter called "Saint Christopher's Church"), is a chapel of ease in the parish of Saint Thomas, Derby:

And whereas Saint Christopher's Church was built in or about the year 1903 and was together with the lands forming the site thereof or appurtenant thereto (hereafter called "the Saint Christopher's scheduled land") consecrated on 23rd January, 1905, but no part of the Saint Christopher's scheduled land has been used for the interment of human remains:

And whereas Saint Christopher's Church has by virtue of an Order in Council of Her Majesty Queen Elizabeth II dated 11th April, 1963, been closed for divine service and is now in a poor state of repair, and the needs of the parish of Saint Thomas, Derby, are adequately provided for by the use for public worship of the church of Saint Thomas, Derby:

And whereas the churchyard of the church of Saint Peter, Derby, was formerly used as a burial ground for the parish of Saint Peter, Derby, but burials in that churchyard were discontinued by virtue of an Order in Council of Her late Majesty Queen Victoria dated 18th October, 1854:

And whereas there is on the said churchyard a church hall which is used in connection with the activities of the parish of Saint Peter, Derby, but the said building is not suitable for the purposes for which it is now used:

And whereas the churchyard of the church of Saint Paul, Derby, was formerly used as a burial ground for the parish of Saint Paul, Derby, but burials in that churchyard were discontinued by virtue of the said Order in Council dated 18th October, 1854:

And whereas the freehold of the Saint Christopher's scheduled land is vested in the incumbent for the time being of the benefice of Saint Thomas, Derby, the present incumbent being the Reverend Henry Robert Joyce (hereafter called " the incumbent of Saint Thomas' "); the freehold of the churchyard of the church of Saint Peter, Derby (as of the site of that church), is vested in the lay rectors, being the Church Pastoral-Aid Trust (hereafter called " the trust "); and the freehold of the churchyard of the church of Saint Paul, Derby (as of the site of that church), is vested in the incumbent for the time being of the benefice of Saint Paul, Derby, the present incumbent being the Reverend Kenneth Edward Servanté (hereafter called " the incumbent of Saint Paul's "):

And whereas it is expedient that the freehold of the site of the church hall used in connection with the activities of the parish church of Saint Peter, Derby, and of part of the churchyard of the church of Saint Peter, Derby, adjacent to that church hall (hereafter together called " the Saint Peter's scheduled land ") should be vested in the bishop as in this Act provided:

And whereas it would be of public and local advantage and in the interest both of the diocese and of the parishes of Saint Thomas and Saint Peter, Derby, to dispose of the Saint Christopher's scheduled land and the Saint Peter's scheduled land for any purpose; if requisite to any such purpose, to demolish Saint Christopher's Church and the church hall on the Saint Peter's scheduled land; and to devote the proceeds of sale as in this Act provided:

And whereas it is expedient that a church hall or other building should be erected on part of the churchyard of the church of Saint Paul, Derby, and that an adjacent part of that churchyard (the two such parts being hereafter together called " the Saint Paul's scheduled land ") should be used for a purpose connected with such church hall or other building, as in this Act provided:

And whereas the incumbents of Saint Thomas', Saint Peter's and Saint Paul's, the trust and the respective parochial church councils have agreed to the disposal or appropriation for other uses of the Saint Christopher's scheduled land, the Saint Peter's scheduled land and the Saint Paul's scheduled land:

And whereas it is expedient that the provisions contained herein with regard to the removal of human remains from the Saint Peter's scheduled land and the Saint Paul's scheduled land should be enacted:

And whereas it is expedient that the several provisions contained in this Act should be enacted:

And whereas the objects of this Act cannot be effected 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, that is to say:—

1. This Act may be cited as the Derby Churches (Saint Christopher's, Saint Peter's and Saint Paul's) Act 1966. Short title.

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

" the bishop " means the Bishop of Derby for the time being and, during a vacancy in the see of Derby, includes the guardian of the spiritualities thereof;

" the borough " means the county borough of Derby;

" the diocese " means the diocese of Derby;

" the incumbent of Saint Thomas' ", " the incumbent of Saint Peter's " and " the incumbent of Saint Paul's " mean respectively the incumbent for the time being of the benefice of the parish of Saint Thomas, Derby, Saint Peter, Derby, or Saint Paul, Derby;

" the Saint Christopher's scheduled land ", " the Saint Peter's scheduled land " and " the Saint Paul's scheduled land " mean respectively the lands described in Part I

of the schedule to this Act (comprising the site of the church of Saint Christopher in the parish of Saint Thomas, Derby, and the lands appurtenant thereto); the lands described in Part II of the said schedule (comprising the site of the church hall used in connection with the parish church of Saint Peter, Derby, and part of the churchyard of that church adjacent to that church hall); and the lands described in Part III of the said schedule (comprising part of the churchyard of the parish church of Saint Paul, Derby).

(2) Any reference in this Act to the parish of Saint Thomas, the parish of Saint Peter or the parish of Saint Paul (as the case may be) shall be construed as a reference to the parish of that name in the borough as for the time being constituted.

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by, or by virtue of, any subsequent enactment, including this Act.

Demolition of Saint Christopher's church.

3.—(1) The incumbent of Saint Thomas' may, at any time after the passing of this Act, cause or permit the church to be demolished and the materials thereof to be sold or otherwise disposed of as he may think fit:

Provided that before the church is demolished the incumbent of Saint Thomas' shall arrange for the removal from the church, and for the disposal as the bishop may direct, of the memorial stones or plaques within the church, and of all furniture, instruments, equipment or other chattels therein.

(2) No licence or faculty of the consistory court of the diocese or other or further authority shall be requisite for the exercise of the powers conferred, and the performance of the obligations imposed, by this section.

(3) In this section, the expression " the church " means the church of Saint Christopher, Derby.

Vesting of Saint Peter's scheduled land in bishop and demolition of Saint Peter's church hall.

4.—(1) The Saint Peter's scheduled land, together with all buildings or other structures erected thereon, and all rights and easements appurtenant thereto, shall, on the passing of this Act, vest in the bishop for an estate in fee simple.

(2) The bishop may, at any time after the passing of this Act, with the consent of the parochial church council of the parish of

Saint Peter, cause or permit the existing church hall used in connection with the activities of the parish church of Saint Peter, Derby, to be demolished and the materials thereof to be sold or otherwise disposed of as the bishop may think fit.

(3) No licence or faculty of the consistory court of the diocese or other or further authority shall be requisite for the exercise of the powers conferred by subsection (2) of this section.

Sale, etc., of Saint Christopher's scheduled land and application of proceeds.

5.—(1) Subject to obtaining the prior consent of the bishop, the incumbent of Saint Thomas' may sell, lease or otherwise dispose of the Saint Christopher's scheduled land or any part thereof for such price or consideration, in such manner and upon and subject to such terms and provisions as he may think fit.

(2) All moneys received by the incumbent of Saint Thomas' under section 3 (Demolition of Saint Christopher's church) of this Act and under this section shall be applied as follows:—

(*a*) in the demolition of buildings pursuant to the said section 3, including work of dismantling and all other ancillary work;

(*b*) in defraying the costs, charges and expenses incurred in connection with the sale, lease or disposal of the Saint Christopher's scheduled land or such part thereof as may be so sold, leased or disposed of;

(*c*) in defraying so much as the bishop thinks fit of the cost of the preparing, applying for, obtaining and passing of this Act or otherwise in relation thereto incurred under section 11 (Costs of Act) of this Act;

and any remaining balance held by the incumbent of Saint Thomas' shall be applied by him for such ecclesiastical purposes within the parish of Saint Thomas as may be charitable and as may be determined by the bishop in consultation with the patron of the benefice of that parish, the incumbent of Saint Thomas' and the parochial church council of that parish:

Provided that paragraph (*a*) of this subsection shall not apply to moneys received under subsection (1) of this section if the part of the Saint Christopher's scheduled land comprising the site of the church of Saint Christopher, Derby, has been disposed of under the said subsection (1) and under the terms of the instrument effecting such disposal the demolition of the buildings on the site is to be carried out by some person not acting on behalf of the incumbent of Saint Thomas'.

Sale, etc., of Saint Peter's scheduled land and application of proceeds.

6.—(1) The bishop may sell, lease or otherwise dispose of the Saint Peter's scheduled land or any part thereof for such price or consideration, in such manner and upon and subject to such terms and provisions as he may think fit.

(2) All moneys received by the bishop under section 4 (Vesting of Saint Peter's scheduled land in bishop and demolition of Saint Peter's church hall) of this Act and under this section shall be applied as follows:—

(*a*) in the demolition of buildings pursuant to the said section 4, including work of dismantling and all other ancillary work;

(*b*) in defraying the costs, charges and expenses incurred in connection with the sale, lease or disposal of the Saint Peter's scheduled land, or such part thereof as may be so sold, leased or disposed of;

(*c*) in defraying so much as the bishop thinks fit of the cost of the preparing, applying for, obtaining and passing of this Act or otherwise in relation thereto incurred under section 11 (Costs of Act) of this Act;

(*d*) in the removal of human remains (if any) pursuant to section 9 (Removal of human remains from Saint Peter's and Saint Paul's scheduled lands) of this Act:

Provided that paragraph (*a*) of this subsection shall not apply to moneys received under subsection (1) of this section if the part of the Saint Peter's scheduled land comprising the site of the church hall used in connection with the activities of the parish church of Saint Peter, Derby, has been disposed of under the said subsection (1) and under the terms of the instrument effecting such disposal the demolition of the buildings on the site is to be carried out by some person not acting on behalf of the bishop.

(3) Any balance remaining after discharging the liabilities imposed by the last foregoing subsection shall be applied as follows:—

first, as to so much thereof as does not exceed forty thousand pounds, for such ecclesiastical purposes connected with the affairs of the parish of Saint Peter as may be charitable and as the bishop, in consultation with the trust, the incumbent of Saint Peter's and the parochial church council of that parish, may determine;

secondly, as to so much thereof (if any) as exceeds forty thousand pounds but does not exceed eighty thousand pounds, for such ecclesiastical purposes connected with the affairs of the diocese as may be charitable and as the bishop, in consultation with the committee, may determine and, in the determination of such purposes, preferential consideration shall be given to the needs of those parishes in the diocese which are situate wholly or partly within the borough; and

thirdly, as to so much thereof (if any) as exceeds eighty thousand pounds, one-half for the purposes specified under and in accordance with the provisions of the

second head of this subsection, and the other half for such ecclesiastical purposes connected with the affairs of any of the parishes (including the parish of Saint Peter) situate wholly or partly within the Ancient Parish of Saint Peter, Derby, as may be charitable and as the bishop, in consultation with the committee and with the trust, may determine.

(4) In this section, the expression "the trust" means the Church Pastoral-Aid Trust and the expression "the committee" means the Pastoral Committee for the diocese appointed under the Pastoral Reorganisation Measure, 1949.

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

7.—(1) The provisions of this section shall have effect—

(*a*) as respects the Saint Christopher's scheduled land, as from the date on which the incumbent of Saint Thomas' either causes or permits commencement of demolition of the church of Saint Christopher, Derby, pursuant to section 3 (Demolition of Saint Christopher's church) of this Act, or completes a sale, lease or other disposition pursuant to section 5 (Sale, etc., of Saint Christopher's scheduled land and application of proceeds) of this Act (whichever event occurs earlier);

(*b*) as respects the Saint Peter's scheduled land, as from the date on which the bishop completes a sale, lease or other disposition pursuant to section 6 (Sale, etc., of Saint Peter's scheduled land and application of proceeds) of this Act; and

(*c*) as respects the Saint Paul's scheduled land, as from the date on which the incumbent of Saint Paul's commences or authorises the commencement of work on that land, or on such part thereof as he may assign for the purpose, for conversion to any use authorised by paragraph (*b*) of section 8 (Power to use scheduled lands for other purposes) of this Act.

(2) (*a*) The Saint Christopher's scheduled land, or so much thereof as is sold, leased or otherwise disposed of pursuant to the said section 5 of this Act;

(*b*) The Saint Peter's scheduled land, or so much thereof as is sold, leased or otherwise disposed of pursuant to the said section 6 of this Act; and

(*c*) The Saint Paul's scheduled land, or so much thereof as is appropriated to any of the uses authorised by paragraph (*b*) of the said section 8 of this Act;

shall be freed and discharged—

(i) from all trusts, uses, obligations, disabilities and restrictions whatsoever, including (in the case of the Saint

Christopher's scheduled land and the Saint Peter's scheduled land) the effects of consecration, which immediately before the said date attached thereto under ecclesiastical law or otherwise; and

(ii) from all other trusts, uses, obligations, disabilities and restrictions whatsoever which attached thereto immediately before the said date by reason of the said scheduled lands, or the part thereof, having been or formed the site of a church or the enclosure of a church, or the site of a church hall, or having been used or set apart for the interment of human remains (as the case may be):

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 any of the said lands or any part thereof which attached thereto immediately before the passing of this Act.

(3) The Saint Peter's scheduled land or, as the case may be, the Saint Paul's scheduled land, shall (as regards so much thereof as is respectively sold, leased or otherwise disposed of, or appropriated, as aforesaid) also be freed and discharged from all rights and interests of any person who is an executor, administrator or relative of any deceased person whose remains are interred in the Saint Peter's scheduled land or in the Saint Paul's scheduled land.

Power to use scheduled lands for other purposes.

8. Notwithstanding anything contained in any enactment, but subject to the provisions of this Act, it shall be lawful at any time—

(*a*) to use, deal with or dispose of the Saint Christopher's scheduled land or, as the case may be, the Saint Peter's scheduled land respectively, or any part of those lands, for any purpose;

(*b*) to erect on the Saint Paul's scheduled land a church hall or other building, and to use or lay out any other part of that land for a purpose connected with such church hall or other building, and in connection therewith to erect buildings or other structures;

in like manner as if no part thereof had ever been or formed the site of a church or the enclosure of a church, or the site of a church hall, or (as the case may be) been used or set apart for the interment of human remains.

Removal of human remains from Saint Peter's and Saint Paul's scheduled lands.

9.—(1) Before the relevant owner erects or causes to be erected any building on any part of the Saint Peter's scheduled land or the Saint Paul's scheduled land, or uses or causes the same to be used for any other purpose likely to involve the disturbance of human remains (any question as to which shall be determined

by the Secretary of State, whose decision shall be final), the relevant owner shall remove or cause to be removed therefrom the remains of all deceased persons interred therein.

(2) Before proceeding to remove any such remains the relevant owner shall give notice of his intention so to do by publishing a notice once in each of two successive weeks in a newspaper circulating in the borough, with an interval between publications of not less than six days, and shall display a like notice in a conspicuous place on the Saint Peter's scheduled land or the Saint Paul's scheduled land (as the case may be), and such notice shall have embodied in it the substance of subsections (3), (4), (5), (6), (7), (8) and (9) of this section.

(3) At any time within two months after the first publication of such notice, any person who is an executor, administrator or relative of any deceased person whose remains are interred in the Saint Peter's scheduled land or the Saint Paul's scheduled land (or part thereof) to which the notice under the last foregoing subsection relates may give notice in writing to the relevant owner of his intention to undertake the removal of such remains, and thereupon he shall be at liberty, without any faculty for the purpose but subject as hereinafter mentioned, and to any regulations made by the bishop, within two months from the date of such last-mentioned notice, to cause such remains to be removed to and reinterred in any other 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 to be removed to and cremated in any crematorium.

(4) If any person giving such notice as aforesaid fails to satisfy the relevant owner that he is such an executor, administrator or relative as he claims to be, the question shall be determined on the application of either party in a summary manner by the registrar of the consistory court of the diocese, who shall have power to make an order specifying who shall remove the remains, and as to the payment of the costs of the application, and of such reasonable fee payable to the registrar as he may determine.

(5) The expenses of a removal and reinterment or cremation (not exceeding in respect of remains removed from any one grave, the sum of fifty pounds) shall be defrayed by the relevant owner, 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 no such notice as aforesaid shall have been given to the relevant owner in respect of the remains in any grave, or if after such 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 (not being the relevant owner) fails to comply with a provision of this section, the relevant owner may, without any faculty for that purpose, remove the remains of the deceased person and cause them to be reinterred in such other consecrated burial ground or cemetery in which burials may legally take place as the relevant owner thinks suitable for that purpose, or cremated in such crematorium as the relevant owner thinks suitable for such last-mentioned purpose, but, in any case where such removal and reinterment is effected by the incumbent of Saint Paul's, the previous consent of the bishop to such reinterment shall be required, and 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 any part of the Saint Peter's scheduled land or the Saint Paul's scheduled land, the relevant owner shall deposit with the Registrar General a certificate of removal and reinterment or cremation giving the dates of removal and reinterment or cremation, respectively, identifying the place from which the remains were removed and the place in which they were reinterred or cremated and showing the particulars of each removal separately.

(8) All tombstones relating to the remains of any deceased person removed under this section shall, at the expense of the relevant owner, be removed and re-erected at the place of reinterment or cremation of such remains, or—

(*a*) in any case where application in that behalf is made to the bishop by such executor, administrator or relative as aforesaid; or

(*b*) in any case where, failing such application, application in that behalf is made by the incumbent of Saint Paul's as respects any tombstone relating to the remains of any deceased person removed from the Saint Paul's scheduled land; or

(*c*) as respects any tombstone relating to the remains of any deceased person removed from the Saint Peter's scheduled land;

at such place as the bishop may direct:

Provided that in the case of a tombstone in respect of which no application is made by such executor, administrator or relative as aforesaid, it shall not be necessary to re-erect the tombstone if the relevant owner considers 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 relevant owner may direct.

(9) The relevant owner shall cause a record to be made of each tombstone taken from the Saint Peter's scheduled land or the Saint Paul's scheduled land 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.

(10) The removal of the remains of any deceased person under this section shall be carried out under the supervision and to the satisfaction of the medical officer of health of the borough.

(11) If the Saint Peter's scheduled land, or any part thereof, shall be sold, leased or otherwise disposed of by the bishop before the remains of all deceased persons interred in the Saint Peter's scheduled land, or such part thereof, as the case may be, shall have been removed, the provisions of this section shall have effect in relation to the Saint Peter's scheduled land, or such part, as the case may be, as if for the references therein to the relevant owner, there were substituted references to the person in whom the Saint Peter's scheduled land, or such part, as the case may be, is for the time being vested.

(12) In this section, the expression "the relevant owner" means, in relation to the Saint Peter's scheduled land, the bishop, and, in relation to the Saint Paul's scheduled land, means the incumbent of Saint Paul's.

Saving for town and country planning.

10. The provisions of the Town and Country Planning Act, 1962, and any restrictions or powers thereby imposed or conferred in relation to land shall apply and may be exercised in relation to any land notwithstanding that the development thereof is or may be authorised or regulated by or under this Act.

Costs of Act.

11. All the costs, charges and expenses preliminary to and of and incidental to the preparing, applying for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by the Derby Diocesan Board of Finance.

SCHEDULE

PART I

SAINT CHRISTOPHER'S SCHEDULED LAND

A piece of land in the borough containing 9,198 square feet situated on the south-east side of Shaftesbury Crescent with a frontage thereto of 66 feet and bounded on the north-east by number 195 Shaftesbury Crescent and on the south-west by number 207 Shaftesbury Crescent and by the rear boundaries of premises fronting Holcombe Street and on the south-east by the rear boundary of premises fronting Harrington Street.

PART II

SAINT PETER'S SCHEDULED LAND

A piece of land in the borough situated on the south side of a road known as Saint Peter's Churchyard and comprising so much of the churchyard appurtenant to the church of Saint Peter as lies to the west and south of an imaginary straight line drawn from a point on the south side of the said road 180 feet east-north-east of the north-east corner of the Methodist Church to a point on the boundary of the said churchyard 30 feet east of the south-east corner of the church hall used in connection with the parish of Saint Peter.

PART III

SAINT PAUL'S SCHEDULED LAND

A piece of land in the borough situated on the east side of Seale Street and bounded by an imaginary line commencing at the south-east corner of Seale Street, thence proceeding in an easterly direction along the northern boundaries of premises fronting to Mansfield Street to a point 135 feet east from the point of commencement, thence in a west-north-westerly direction to the south-east corner of the south transept of Saint Paul's Church for a distance of 35 feet, thence along the south wall of the said transept for a distance of 27 feet, thence in a north-north-easterly direction for a distance of 10 feet, thence in a west-north-westerly direction for a distance of 64 feet to a point on the east side of Seale Street 65 feet north-north-east of the point of commencement, and thence in a south-south-westerly direction along the east side of Seale Street and terminating at the point of commencement.

This schedule shall be read as if the words " or thereabouts " were inserted after each distance or admeasurement mentioned therein.

PRINTED BY THE SOLICITORS' LAW STATIONERY SOCIETY, LTD., FOR
SIR PERCY FAULKNER, K.B.E., C.B.
Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE
Price 1*s.* 6*d.* net
PRINTED IN ENGLAND

Derby Churches (Saint Christopher's, Saint Peter's and Saint Paul's) Act 1966

CHAPTER xviii

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