ELIZABETH II

1988 CHAPTER vii

An Act to re-enact with amendments and to extend certain local enactments in force within the Borough of Hastings in relation to the foreshore and other lands vested in the Hastings Borough Council; to confer powers in respect of retaining walls; and for other purposes. [15th March 1988]

WHEREAS—

(1) By virtue of the Local Government Act 1972 (hereinafter referred to as "the Act of 1972") the Borough of Hastings was constituted on 1st April 1974 comprising the former county borough of Hastings: 1972 c. 70.

(2) Certain land belonging to the Hastings Borough Council (hereinafter referred to as "the borough council") was conveyed to them subject to a trust in favour of the public contained in a conveyance dated 8th September 1893 from the Crown to the borough council's predecessors:

(3) Section 124 of the Hastings Corporation Act 1924 contained provision permitting the use of the land for purposes other than those permissible under the trust and some of the land has been so used: 1924 c. lxxxviii.

(4) The said section 124 has ceased to have effect by virtue of section 262 of the Act of 1972:

(5) Doubts have arisen as to the application of the trust which make it expedient that the powers of the said section 124 should be re-enacted and extended:

(6) It is expedient that the other provisions of this Act should be enacted:

(7) The purposes of this Act cannot be effected without the authority of Parliament:

(8) In relation to the promotion of the Bill for this Act the requirements of section 239 of the said Act of 1972 have been observed:

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:—

Short title.

1. This Act may be cited as the Hastings Borough Council Act 1988.

Interpretation.

2. In this Act, unless the context otherwise requires—

"the 1893 Conveyance" means the conveyance dated 8th September 1893 and made between Her Majesty Queen Victoria of the first part Sir Robert Nigel Fitzhardinge Kingscote of the second part the Board of Trade of the third part and the former Hastings Corporation of the fourth part;

"the borough" means the borough of Hastings;

"the borough council" means the council of the borough;

"the deposited map" means the map marked as relative to section 3 (Use of foreshore and adjacent lands) of this Act, one copy of which has been deposited in the office of the Clerk of the Parliaments, House of Lords, one in the Private Bill Office, House of Commons and one in the office of the proper officer of the borough council;

"telecommunications operator" means the operator of a telecommunications code system; and "operator" and "telecommunications code system" have the respective meanings given by paragraph 1 of Schedule 4 to the Telecommunications Act 1984.

1984 c. 12

Use of foreshore and adjacent lands.

3.—(1) In this section "specified land" means any land specified in column (1) of the Schedule to this Act and "permitted purpose" in relation to any specified land means the purpose, or any purpose, specified in relation to that land in column (2) of the Schedule.

(2) The borough council may use any specified land for a permitted purpose and, for any such purpose, may erect buildings, structures or works on any part of such land except the area shown edged blue.

(3) The borough council may allow any other person to use any specified land for a permitted purpose and to do on it anything the council may do under subsection (2) above, and for those purposes the council may (subject to subsection (4) below) let or otherwise make available any part of the land, or anything on the land, on such terms and conditions as they think fit.

1972 c. 70.

(4) Subsection (2) of section 123 of the Local Government Act 1972 shall apply to any disposal under subsection (3) above as it applies to a disposal under that section.

(5) The borough council or any person allowed to use any specified land, or anything on such land, by virtue of subsection (3) above may charge for the use of any facilities provided by them under this section such sums as they think fit.

For protection of Hastings Fishermen's Society.

4. Nothing in section 3 (Use of foreshore and adjacent lands) of this Act shall affect the operation of the deed of compromise dated 9th May 1947 and made between the mayor, aldermen and burgesses of the county borough of

Hastings of the first part, George Henry Simmons and George Burr of the second part and the Hastings Fishermen's Society of the third part.

Retaining walls.

5.—(1) In this section "retaining wall" means a wall which—

(*a*) serves or is intended to serve as a support for earth or other material on one side only so that the top level of that earth or material is at any point not less than 1·5 metres above the level of the ground adjoining the other side; and

(*b*) does not form part of a permanent building or the revetment of a trench.

(2) After the commencement of this Act no retaining wall shall be erected otherwise than in accordance with plans, sections and specifications approved by the borough council; and if any person erects such a wall in contravention of this subsection he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Any person aggrieved by the refusal of the borough council to approve any plans, sections and specifications submitted to them in pursuance of subsection (2) above may appeal to the Secretary of State.

(4) If any retaining wall—

(*a*) is in such disrepair as to be dangerous; or

(*b*) being a wall erected before the passing of this Act or erected in contravention of subsection (2) above, is so constructed as to be dangerous;

the borough council may by notice to the owner or occupier require him to execute such work as may be necessary to obviate the danger and the provisions of sections 290 and 291 of the Public Health Act 1936 with respect to appeals against, and the enforcement of, notices requiring the execution of works and the recovery of expenses shall apply in relation to such a notice as they apply in relation to the notices mentioned in subsection (1) of the said section 290.

1936 c. 49.

(5) (*a*) In proceedings for an offence under subsection (2) above it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(*b*) If in any case the defence provided by paragraph (*a*) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying, or assisting in the identification of, that other person.

(6) The provisions of this section shall not apply to—

(*a*) any length of a retaining wall to which section 167 of the Highways Act 1980 (retaining walls near streets) applies or for the maintenance of which the highway authority are responsible;

1980 c. 66.

(*b*) a retaining wall erected on land belonging to any transport undertakers within the meaning given by section 331 of the said Act of 1980, so long as that land is used by those undertakers primarily for the purpose of their railway, dock, canal or inland navigation undertaking;

(*c*) a retaining wall erected on operational land.

(7) Nothing in this section affects any requirement to obtain approval or any other obligation imposed by, or by virtue of, any other enactment.

(8) For the purposes of subsection (6)(*c*) above "operational land" shall be construed in accordance with section 222 of the Town and Country Planning Act 1971 and as though a telecommunications operator were a statutory undertaker.

1971 c. 78.

Saving for Town and Country Planning. S.I. 1977/289.

6. Any development authorised by this Act shall not be deemed for the purposes of the Town and Country Planning General Development Order 1977 (or any general order superseding that order made under section 24 of the Town and Country Planning Act 1971, or any corresponding provision of an Act repealing that section) to be development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out.

SCHEDULE

Section 3.

USE OF FORESHORE AND ADJACENT LANDS

Land shown on deposited map (1)	Activities (2)
Edged green (continuation of existing facilities).	Parking of vehicles.
Edged blue (continuation of existing facility).	Boat compound.
Edged red (continuation and extension of existing facilities).	Religious and cultural activities, entertainments, amusements, sports, leisure activities, illuminations, information, and the sale of refreshments and beach requisites.
Hatched green.	Parking of vehicles.
Coloured mauve.	Lifeboat station and functions of the coastguard, police and borough council not inconsistent with the trusts imposed by the 1893 Conveyance.

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CHAPTER vii

ARRANGEMENT OF SECTIONS

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SCHEDULE—Use of foreshore and adjacent lands.