ELIZABETH II



1978 CHAPTER vii

An Act to remove restrictions attaching to Mile End Gardens, Portsmouth and authorise the use of the said lands for harbour development; and for other purposes.

[30th June 1978]

WHEREAS—

(1) The City of Portsmouth (hereinafter referred to as "the city") is under the management and local government of the Portsmouth City Council (hereinafter referred to as "the Council"):

(2) By the Portsmouth Mile End Quay Revision Order 1966 the former Portsmouth Corporation were authorised to construct a new wharf and quay in the city (hereinafter referred to as "the Mile End Quay undertaking") to meet the urgent need to make provision for increased trade with the Channel Islands and French ports: S.I. 1966/982.

(3) The Mile End Quay undertaking was duly constructed but, despite its extension by the execution of further works authorised by the Portsmouth Mile End Quay Revision Order 1973, the continued increase in the business of the undertaking has been such that the harbour facilities are now insufficient for the present and expected volume of traffic: S.I. 1973/2135.

(4) It is accordingly expedient to make provision for the extension of the harbour facilities at the Mile End Quay undertaking and so to promote opportunities for employment in the city:

(5) Mile End Gardens, which is situated between the existing Mile End Quay undertaking to the west and south and Mile End Road (formerly Commercial Road, one of the principal traffic routes in the city), to the east, comprises the site of a former cemetery or burial ground now vested in the Council as an open space:

(6) By an indenture dated 31st May 1831 certain persons were declared to be the owners of the lands therein specified comprising the existing Mile End Gardens together with other lands (hereinafter together referred to as "the said lands") in trust for a general cemetery for persons of all denominations, subsequently known as the Portsea Island General Cemetery; by Orders in Council of Her Late Majesty Queen Victoria dated 29th March 1854 and 3rd February 1866 burials in the said lands were ordered to be discontinued except as therein respectively mentioned and the said lands thereupon constituted a disused burial ground
1884 c. 72. within the meaning of the Disused Burial Grounds Act 1884:

(7) By conveyances dated 9th May 1958 Rona Irene Kent and John Francis Connor, then the subsisting trustees under the said indenture, pursuant to a consent dated 20th February 1957 given by the then Minister of Housing and Local Government under
1857 c. 81. section 24 of the Burial Act 1857, sold the said lands to Austen Frederick Herbert Seal who, by the same conveyances, sold part of the lands to Shell-Mex and BP Limited and gave to the former Portsmouth Corporation the remaining part of the said lands:

(8) In the said conveyance and gift to the former Portsmouth Corporation the Corporation declared that they would hold the part of the said lands so conveyed to them, comprising 1·48 hectares or thereabouts at Commercial Road, Portsmouth, upon trust for use by the public for the purpose of exercise and recreation
1906 c. 25. pursuant to the Open Spaces Act 1906; the lands so conveyed to the Corporation have been maintained as a public open space known as the Mile End Gardens but the area thereof was reduced when part was appropriated for the reconstruction of Mile End Road:

(9) The Council are providing a new area of open space extending to some 1·88 hectares at Buckland Park in the residential area east of Mile End Road within 325 metres of the Mile End Gardens and the donor of the Mile End Gardens has notified the Council that he has no objection to the closure of the gardens subsequent to the opening to the public of the said open space at Buckland Park:

(10) It is expedient that on the opening to the public of the said open space at Buckland Park the Council should be authorised to appropriate and use all or part of the Mile End Gardens for the purposes of the extension of the harbour facilities available at their Mile End Quay undertaking and that the other provisions contained in this Act be enacted:

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

(12) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 have been observed: 1972 c. 70.

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 Mile End Gardens (Portsmouth) Act 1978. Short title.

2. In this Act— Interpretation.

" the Buckland Park open space " means the lands in the city containing in the whole 1·88 hectares or thereabouts situated at Buckland Park which the Council have laid out, or are laying out, as an open space;

" the city " means the city of Portsmouth;

" the Council " means the Portsmouth City Council;

" the Mile End Garden lands " means the lands in the city containing in the whole 1·24 hectares or thereabouts lying between the Albert Johnson Quay to the west, Mile End Road to the east, Wharf Road to the north and the Albert Johnson Quay and warehouse in Mile End Road to the south, bounded by a line commencing in Mile End Road at a point 300 metres or thereabouts south of the centre of the roundabout at the junction of Mile End Road with Kingston Crescent, proceeding in a westerly direction along Wharf Road for a distance of 160 metres or thereabouts, thence in a southerly direction along the boundary of the Albert Johnson Quay for a distance of 79 metres or thereabouts, thence in an easterly direction along the boundary of the Albert Johnson Quay and the said warehouse for a distance of 156 metres or thereabouts, thence in a northerly direction along Mile End Road for a distance of 78 metres or thereabouts and terminating at the point of commencement;

" open space " has the same meaning as in the Open Spaces Act 1906.

1906 c. 25.

Removal of restrictions on Mile End Gardens.

3. Notwithstanding the conveyance to the former Portsmouth Corporation dated 9th May 1958 referred to in the Preamble to this Act, or anything done thereunder or any rule of law, the Council may appropriate the Mile End Garden lands for use for the purposes of their harbour undertaking freed from any trust or restriction under the said conveyance dated 9th May 1958 or otherwise:

Provided that the Council shall not so appropriate any part of the Mile End Garden lands until they are satisfied that the Buckland Park open space is available to the public as open space.

Removal of human remains.

4.—(1) (*a*) No part of the Mile End Garden lands shall be used for any purpose likely to involve the disturbance of the remains of any deceased person interred therein until those remains have been removed and re-interred or cremated in accordance with the following provisions of this section.

(*b*) Before any such remains are removed from any part of the Mile End Garden lands the Council shall give notice in accordance with subsection (3) below of the intended removal of the remains from that part of the lands.

(2) No part of the Mile End Garden lands shall be used for the purpose of carrying out any work which does not involve the disturbance of the remains of any deceased person interred in any grave or vault, but which will render the grave or vault inaccessible, until the Council have given notice in accordance with subsection (3) below that the grave or vault will be rendered inaccessible.

(3) Notice under subsection (1) or (2) above shall describe the part of the lands or any grave or vault to which it relates and state the general effect of the following provisions of this section, and shall be given by—

(*a*) publishing it once in each of two successive weeks in a newspaper circulating in the city;

(*b*) displaying it in a conspicuous place upon or near to the Mile End Garden lands; and

(*c*) serving a copy of the notice on the personal representatives or a relative of any deceased person whose remains were interred after 1st January 1948 in the part of the lands or, as the case may be, any grave or vault to which the notice relates, being a personal representative or relative whose name and address can be ascertained after reasonable inquiry.

(4) At any time within 8 weeks after the first publication of a notice under subsection (1) or (2) above, any person who is a personal representative or relative of any deceased person whose remains are interred in the part of the lands or, as the case may be, in the grave or vault described in the notice may give notice in writing to the Council of his intention to undertake the removal of such remains, and thereupon, if such remains can be identified, he shall be at liberty to cause such remains to be removed and re-interred in any 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, and forthwith after such re-interment or cremation shall provide to the Council a certificate for the purpose of enabling compliance with subsection (8) below.

(5) If any person giving such notice as aforesaid fails to satisfy the Council that he is such personal representative or relative as he claims to be or that the remains in question can be identified, the question shall be determined on the application of either party by the county court, and the court shall have power to make an order specifying who shall remove the remains and as to the payment of the costs of the application.

(6) The Council shall defray the expenses of the removal and re-interment or cremation of such remains, not exceeding such sum as would be incurred by the Council in the removal and re-interment or, as the case may be, cremation of those remains within a cemetery managed by the Council in the city, or such other sum as may be reasonable in the circumstances.

(7) If—

(*a*) within the said period of 8 weeks no notice under subsection (4) above has been given to the Council in respect of the remains in any grave or vault; or

(*b*) such notice is given and no application is made under subsection (5) above within 8 weeks after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 8 weeks thereafter; or

(*c*) within 8 weeks after any order is made by the county court under the said subsection (5) any person, other than the Council, specified in the order fails to remove the remains; or

(*d*) it is determined that the remains to which any such notice relates cannot be identified;

the Council shall be at liberty—

(i) in the case where notice of intended removal of the remains was given under subsection (1) above, to remove

the remains and cause them either to be re-interred in such burial ground or cemetery in which burials may legally take place as the Council think suitable for the purpose (but, in the case of a churchyard, only with the consent of the incumbent of the benefice concerned), or, after consultation with any personal representative or relative by whom notice under subsection (4) above has been given in respect of the remains, to be removed to and cremated in such crematorium as the Council think suitable for the purpose;

(ii) in the case where notice that the grave or vault in which the remains are interred will be rendered inaccessible was given under subsection (2) above, to carry out the work that will have that effect.

(8) Upon any removal of remains from the Mile End Garden lands and their re-interment or cremation a certificate of removal and re-interment or cremation shall be sent to the Registrar General by the Council giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated, showing the particulars of each removal separately.

(9) (*a*) Subject as hereinafter provided, any monument or tombstone relating to the remains of any deceased person removed and re-interred under this section shall be removed to and re-erected at the place of re-interment of such remains or at such other place as the county court may direct on the application either of such personal representative or relative as aforesaid or of the Council.

(*b*) Subject as aforesaid, any monument or tombstone relating to the remains of any deceased person removed and cremated under this section shall, at the request of such personal representative or relative as aforesaid or, if no such request is made, at the discretion of the Council, be removed to and re-erected at such place as may be agreed between such personal representative or relative and the Council or, in default of such agreement, at such place as the county court may direct on the application either of such personal representative or relative or of the Council.

(*c*) Any monument or tombstone not re-erected in accordance with paragraph (*a*) or (*b*) above shall be broken and defaced before being disposed of in such manner as the Council think fit.

(*d*) The Council shall not be required under this subsection to remove and re-erect any tombstone which is built into or forms part of a building unless and until that building is demolished.

(*e*) The reasonable expense of removing and re-erecting or disposing of any monument or tombstone under this subsection shall be defrayed by the Council.

(*f*) The Council shall cause a record to be made of each monument and tombstone taken from the Mile End Garden lands under this section containing—

(i) a copy of the inscription thereon; and

(ii) if it is intended to preserve the monument or tombstone, a statement naming the place, if any, where it has been re-erected;

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

(*g*) Where the Council consider that, by reason of its illegible or ruinous condition, a monument or tombstone removed under this subsection is unsuitable for re-erection, they may dispose of the monument or tombstone in such manner as they think fit.

(*h*) In this subsection references to re-erection include placing a monument or tombstone in any position in which any words inscribed thereon are visible.

(10) The Council shall cause a record to be made of every grave or vault rendered inaccessible by any such work as is referred to in subsection (2) above containing a copy of any legible inscription on any monument or tombstone on, or forming part of, the grave or vault.

(11) 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.

(12) Any jurisdiction or power conferred on the county court by this section may be exercised by the registrar of the court.

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CHAPTER vii

ARRANGEMENT OF SECTIONS

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