

CHAPTER xiii

An Act to provide for the transfer of the undertaking of the Newbury Cemetery Company to the mayor aldermen and burgesses of the borough of Newbury to provide for the extinction of common or commonable rights over certain lands in the borough known as Northcroft to make further provision for the health local government and improvement of the borough and for other purposes. [6th May 1953.]

WHEREAS—

(1) The borough of Newbury (hereinafter called " the borough") in the county of Berks is a municipal borough under the government and local management of the mayor aldermen and burgesses of the borough (hereinafter called " the Corporation "):

(2) The Newbury Cemetery Company were incorporated by the Newbury Cemetery Act 1847 by which Act the said company were authorised to establish a cemetery in the borough:

(3) For many years no meeting of the said company has been held and there are no surviving directors:

(4) It is expedient to transfer to the Corporation the undertaking of the said company together with their rights powers and privileges and to provide for the dissolution of the said company:

(5) The Corporation are the owners in fee simple of certain lands in the borough known as Northcroft over which it is alleged that certain common or commonable rights are exercisable and it is expedient to make provision for the extinction of such rights and to confer further powers upon the Corporation with regard to those lands as is in this Act provided:

(6) It is expedient to make further provision with reference to the health local government and improvement of the borough and the finances of the Corporation:

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

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

(9) In relation to the promotion of the Bill for this Act the requirements of Part XIII of the Local Government Act 1933 have been observed:

(10) Plans of the lands required or which may be taken for the purposes or under the powers of this Act and also a book of reference containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of those lands were duly deposited with the clerk of the county council of the administrative county of Berks and are hereinafter respectively referred to as the deposited plans and book of reference:

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):—

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Newbury Corporation Act 1953.

Division of Act into Parts.

2. This Act is divided into Parts as follows:—

Part I.—Preliminary.
Part II.—Transfer of cemetery undertaking.
Part III.—Sanitation and buildings.
Part IV.—Miscellaneous.
Part V.—General.

Incorporation of Lands Clauses Acts.

3. The Lands Clauses Acts except sections 127 to 132 of the Lands Clauses Consolidation Act 1845 (so far as such Acts are applicable for the purposes of and are not varied by or inconsistent with this Act) are hereby incorporated with and form part of this Act:

Provided that the bond required by section 85 of the Lands Clauses Consolidation Act 1845 shall be sufficient without the addition of the sureties mentioned in that section.

PART I —*cont.*

Interpretation.

4.—(1) In this Act the several words and expressions to which meanings are assigned by section 343 of the Public Health Act 1936 have the same respective meanings unless there be something in the subject or context repugnant to such construction.

(2) In this Act unless the subject or context otherwise requires—

" the Act of 1933 " and " the Act of 1936 " mean respectively the Local Government Act 1933 and the Public Health Act 1936;

" the borough " means the borough of Newbury;

" contravention " includes a failure to comply and " contravene " shall be construed accordingly;

" the Corporation " means the mayor aldermen and burgesses of the borough;

" the council " means the council of the borough;

" daily penalty " means a penalty for each day on which an offence is continued after conviction therefor;

" enactment " includes an enactment in this Act or in any general or local Act and any order byelaw or regulation for the time being in force within the borough;

" food " has the same meaning as in the Food and Drugs Act 1938;

" the general rate fund " and " the general rate " mean respectively the general rate fund and the general rate of the borough;

" the Lands Clauses Acts " means the Lands Clauses Acts as modified by the Acquisition of Land (Assessment of Compensation) Act 1919 by Part V of the Town and Country Planning Act 1947 by the Lands Tribunal Act 1949 and by this Act;

" Northcroft " means the lands in the borough numbered 3 on the deposited plans and described in the deposited book of reference.

(3) 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 or by virtue of any subsequent enactment including this Act.

PART II

TRANSFER OF CEMETERY UNDERTAKING

Transfer of cemetery undertaking.

5.—(1) In this section—

" the company " means the Newbury Cemetery Company;

" the date of transfer " means the first day of October nineteen hundred and fifty-three;

PART II —*cont.*

"the undertaking" means the undertaking of the company as existing on the date of transfer including—

(*a*) the cemetery and properties numbered 1 and 2 on the deposited plans and all lands buildings premises apparatus furniture fittings working stock and monuments then belonging to the company;

(*b*) all investments securities book debts bank balances and cash then in the hands of the company or in the hands of their bankers agents or servants;

(*c*) all books of account papers and other documents relating to the undertaking; and

(*d*) all other the real and personal property then belonging to the company.

(2) On the date of transfer the undertaking shall by virtue of this Act and without any conveyance transfer or other instrument be transferred to and vest in and become the property of the Corporation.

(3) As from the date of transfer—

(*a*) the Corporation shall pay and discharge the debts outgoings and liabilities of the company;

(*b*) all rights powers and privileges vested in or had and enjoyed by the company shall be transferred to and vested in and may be had and enjoyed by the Corporation; and

(*c*) subject to the provisions of this section the Corporation shall be deemed to have acquired the undertaking of the company in pursuance of the provisions of the Public Health (Interments) Act 1879.

(4) On the date of transfer—

(*a*) the Newbury Cemetery Act 1847 shall be repealed; and

(*b*) the company shall by virtue of this Act be dissolved and cease to exist.

PART III

SANITATION AND BUILDINGS

Sewers for draining Corporation property.

6. The Corporation shall have the like powers and be subject to the like restrictions in respect of the construction of sewers by them within or without the borough for the purpose only of draining property belonging to them as under the provisions of Part II of the Act of 1936 they have and are subject to in respect of the construction of public sewers within or without the borough (as the case may be) but save as aforesaid the proviso to subsection (2) of section 20 of the Act of 1936 (which provides that a sewer

constructed by a local authority for the purpose only of draining property belonging to them shall not be deemed to be a public sewer for the purposes of that Act until it has been declared so to be) shall apply to any such sewer constructed by them. PART III —*cont.*

Abandoned drains to be cut off.

7.—(1) Where after the passing of this Act any person shall—

(*a*) reconstruct any drain which communicates with any sewer or other drain;

(*b*) lay such drain in a new position; or

(*c*) on the occasion of the execution of any works to or in connection with such drain permanently discontinue the use of such drain;

such person shall cause any drain or portion of drain thereby rendered unnecessary to be cut off and sealed at each end.

(2) Any person who knowingly contravenes the provisions of this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

Food storage accommodation.

8.—(1) Every house erected in the borough after the passing of this Act shall be provided with sufficient and suitable accommodation for the storage of food and any other house in the borough not so provided shall if reasonably practicable be so provided within one month from the service by the Corporation on the owner thereof of a notice requiring it to be so provided.

(2) Any person aggrieved by a requirement imposed by a notice under the preceding subsection may appeal to a court of summary jurisdiction.

(3) If any house required to be provided as aforesaid is occupied when not so provided the owner thereof shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

(4) The owner of any house on whom a notice is served under subsection (1) of this section shall have power notwithstanding any lease or other agreement to enter the house and carry out such work as may be necessary to comply with the notice.

(5) For the purposes of this section—

(*a*) the expression " house " includes any part of a building which is occupied or intended to be occupied as a separate dwelling;

(*b*) the conversion of a building into two or more dwellings shall be deemed to be the erection of each of those dwellings; and

PART III —*cont.*

(*c*) a house the erection whereof was commenced before the passing of this Act shall not be deemed to have been erected after the passing of this Act:

Provided that where any part of a building has been let for occupation as a separate dwelling without the consent of the owner of the building the person so letting that part of the building shall be deemed to be the owner.

Provision of bathrooms.

9.—(1) Where plans of a house are in accordance with building byelaws deposited with the Corporation the Corporation may reject the plans if they do not show that the house will be provided with a bathroom containing a fixed bath.

(2) If the Corporation reject the plans for nonconformity with this section the notice given in pursuance of subsection (2) of section 64 of the Act of 1936 shall specify that the plans have been rejected on account of such nonconformity.

As to defective premises.

10.—(1) Where the Corporation are satisfied that—

(*a*) any house in the borough or the roof of any building in the borough is in such a state (in this section referred to as a " defective state ") as to be prejudicial to health or a nuisance; and

(*b*) having regard to all the circumstances unreasonable delay in remedying the defective state would be occasioned by following in relation to such house or building (in this section referred to as " the premises ") the procedure prescribed in sections 93 to 95 of the Act of 1936;

the Corporation may (instead of serving an abatement notice as required by section 93 of the Act of 1936) serve upon the person upon whom it would otherwise have been appropriate under the said section 93 to serve such an abatement notice a notice to the effect that the Corporation intend to remedy the defective state of the premises themselves and specifying the defects which they intend to remedy.

(2) Not later than the end of the seventh day after the Corporation have served a notice under subsection (1) of this section the person upon whom such notice was served may serve a counter-notice upon the Corporation stating that he intends to remedy the defective state of the premises and if such person having duly served such counter-notice commences within such time thereafter as the Corporation consider reasonable to execute such works and take such steps as may be necessary to remedy such defective state and so long as he progresses to the satisfaction of the Corporation with the execution of such works and the taking of such steps the Corporation shall not take action under subsection (3) of this section in respect of such premises.

PART III —*cont.*

(3) At any time after the expiration of nine days after the service of a notice under subsection (1) of this section and subject to the provisions of subsection (2) of this section the Corporation may execute such works and take such steps as may be necessary to remedy the defective state of the premises to which such notice relates and subject to the provisions of subsection (4) of this section may recover the expenses reasonably incurred by them in so doing from the person upon whom the notice was served.

(4) (*a*) In proceedings to recover expenses under subsection (3) of this section it shall be a defence to prove that—

(i) the alleged defective state did not exist at the time of the service of the notice; or

(ii) the need to abate the defective state was not so urgent as to justify the Corporation themselves executing such works and taking such steps without first complying with the provisions of section 93 and section 94 of the Act of 1936; or

(iii) the person upon whom the notice was served having duly served a counter-notice under subsection (2) of this section commenced within a reasonable time and progressed reasonably with the execution of such works and the taking of such steps as were necessary to remedy the defective state of the premises.

(*b*) A person against whom proceedings are taken under subsection (3) of this section (hereafter in this section referred to as " the original defendant ") shall upon information duly laid by him and on giving to the Corporation not less than three clear days' notice of his intention be entitled to have any person to whose default or unlawful act or sufferance he alleges that the defective state of the premises was due brought before the court in the proceedings and if the original defendant proves that the defective state of the premises arose or continued by the default or unlawful act or sufferance of that other person the court shall have power—

(i) to order that such expenses as aforesaid may be recovered from that other person; or

(ii) to apportion the expenses between persons by whose defaults acts or sufferances the defective state of the premises arose or continued in such manner as the court may deem fair and reasonable.

(*c*) Where the original defendant seeks to avail himself of the provisions of paragraph (*b*) of this subsection—

(i) the Corporation as well as the person to whose default or unlawful act or sufferance the original defendant alleges that the defective state of the premises is due shall have

PART III —*cont.*

the right to cross-examine the original defendant if he gives evidence and any witness called by him in support of his pleas and to call rebutting evidence; and

(ii) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

(5) The Corporation may if they think fit exercise the powers of this section in relation to such defects in the premises as may be specified in the notice notwithstanding the fact that other defects may exist in such premises and in that case nothing contained in this section or done or executed thereunder shall prejudice or affect the powers of the Corporation under sections 93 to 98 and section 100 of the Act of 1936 in relation to any such other defect in such premises.

PART IV

MISCELLANEOUS

Extinction of certain rights over and use of Northcroft.

11. As from the first day of January nineteen hundred and fifty-four all common or commonable rights (if any) on and over Northcroft shall be and are hereby extinguished and the powers of the Corporation with regard to parks pleasure grounds and recreation grounds under any enactment may be exercised as fully and freely with regard to Northcroft as with regard to the other parks pleasure grounds and recreation grounds of the Corporation:

Provided that the Corporation shall not under subsection (4) of section 59 (Powers of the Corporation with regard to parks and recreation grounds) of the Newbury Corporation Act 1925 let more than one-half of the area of Northcroft at any one time.

Compensation for rights extinguished.

12.—(1) The Corporation shall pay or make compensation for the rights extinguished by section 11 (Extinction of certain rights over and use of Northcroft) of this Act to the persons (if any) who have lawfully exercised such rights at any time during the period of ten years immediately preceding the twentieth day of November nineteen hundred and fifty-two and who shall within a period of two months after the passing of this Act deliver to the Corporation a claim in writing to such compensation.

(2) (*a*) If the Corporation shall dispute the right of any person to compensation under subsection (1) of this section such dispute shall be determined by arbitration.

(*b*) Where under this section any dispute is to be determined by arbitration the dispute shall be referred to a single arbitrator to be agreed between the parties to the dispute or failing agreement appointed on the application of either party (after notice in

writing to the other) by the President of the Law Society and subject as aforesaid the provisions of the Arbitration Act 1950 shall apply to the reference.

(3) The compensation to be paid or made by the Corporation under subsection (1) of this section to any person entitled to such compensation shall be settled in manner provided by the Lands Clauses Acts:

Provided that the council may by resolution passed within one month after the expiration of the period within which claims for compensation are to be delivered to them under subsection (1) of this section determine that all questions of compensation arising under this section shall be settled in accordance with subsection (4) of this section.

(4) If the council pass the resolution referred to in subsection (3) of this section the following provisions shall have effect (namely):—

(*a*) The Corporation shall within six weeks after the expiration of the period within which claims for compensation are to be delivered to them under subsection (1) of this section convene a meeting of the persons who have delivered such claims in the same manner as if the rights extinguished by this Act were commonable rights within the meaning of section 102 of the Lands Clauses Consolidation Act 1845;

(*b*) Such meeting shall be held at a time and place determined by the mayor of the borough and shall be convened by the service personally or by post of a notice thereof upon each of the persons referred to in the last foregoing paragraph but the failure of any such person to receive a notice shall not invalidate the meeting or the business to be transacted thereat and any such business may be transacted although all of such persons are not present;

(*c*) Such meeting shall proceed to the appointment of a committee in manner provided by section 103 of the Lands Clauses Consolidation Act 1845 and in the event of such committee and the Corporation being unable to agree upon a sum of money or other compensation to represent the value of the rights extinguished by this Act of the persons entitled to compensation under this section the question shall be determined and compensation shall be paid and apportioned in accordance with the provisions of the Lands Clauses Acts which relate to the determination apportionment and payment of compensation for commonable and other rights referred to in sections 99 to 107 of the Lands Clauses Consolidation Act 1845.

PART IV —*cont.*

Application of provisions relating to commons.

13. In the application to Northcroft of sections 99 to 107 of the Lands Clauses Consolidation Act 1845 those provisions shall have effect subject to the last two foregoing sections.

Power to Corporation to borrow etc. for development of corporate land.

14. The layout and development of any corporate land (as defined by section 305 of the Act of 1933) for the time being belonging to the Corporation and the alteration enlargement improvement extension reconstruction or rebuilding of any existing building thereon shall be purposes for which the Corporation may borrow or may expend money out of the general rate fund.

Collection and recovery of water rates and charges.

15.—(1) Any water rate or charge payable to the Corporation may be demanded and collected together with the general rate and the same books may be used for the said rate or charge and the general rate.

(2) Notwithstanding the provisions of any other enactment any water rate or charge recoverable by the Corporation in a court of summary jurisdiction may (without prejudice to any other right or remedy of the Corporation) be recoverable in the same manner and subject to the same provisions in respect of such recovery as the general rate.

(3) Section 69 (Water rent and gas accounts may be collected with consolidated rate) of the Newbury Corporation Act 1925 is hereby repealed.

As to recovery summarily of sums due for water fittings.

16. If the Corporation commence proceedings for the summary recovery of a sum due for the supply of water any other sum due or payable to the Corporation in respect of the sale or hire of any apparatus or fittings supplied by them for or in connection with the consumption or use of water or the provision of materials and work in connection therewith or the fixing setting up repairing altering maintaining or removal thereof may be included in the same summons and may be recovered summarily provided the amount due or payable in respect thereof does not in the aggregate exceed twenty pounds.

Robes of office.

17. The Corporation may provide and maintain or contribute towards the cost of providing and maintaining robes of office and headdresses for the use of the mayor aldermen and councillors for the time being of the borough:

Provided that any robes and headdresses provided by the Corporation under the powers of this section shall remain the property of the Corporation.

PART V

GENERAL

Restriction on right to prosecute.

18. Proceedings in respect of an offence created by or under this Act shall not without the written consent of the Attorney-General be taken by any person other than a party aggrieved or the Corporation.

Appeals.

19.—(1) Section 300 of the Act of 1936 shall apply with respect to appeals to a court of summary jurisdiction under any enactment in this Act as it applies with respect to such appeals under any enactment in that Act and sections 301 and 302 of that Act shall apply accordingly.

(2) Where any requirement refusal or other decision of the Corporation against which a right of appeal is conferred by this Act involves the execution of any work or the taking of any action then until the time for appealing has expired or when an appeal is lodged until the appeal is disposed of or withdrawn or fails for want of prosecution no proceedings shall be taken in respect of any failure to execute the work or take the action nor shall the Corporation themselves execute the work or take the action.

Application of provisions of Act of 1936.

20.—(1) The sections of the Act of 1936 hereinafter mentioned shall have effect as if they were re-enacted in this Act and in terms made applicable thereto (that is to say):—

Section 275 (Power of local authority to execute certain work on behalf of owners or occupiers);

Section 276 (Power of local authority to sell certain materials);

Section 277 (Power of councils to require information as to ownership of premises);

Section 283 (Notices to be in writing; forms of notices &c.);

Section 284 (Authentication of documents);

Section 285 (Service of notices &c.);

Section 287 (Power to enter premises);

Section 288 (Penalty for obstructing execution of Act);

Section 289 (Power to require occupier to permit works to be executed by owner);

Section 291 (Certain expenses recoverable from owners to be a charge on the premises: power to order payment by instalments);

Section 293 (Recovery of expenses &c.);

Section 294 (Limitation of liability of certain owners);

Section 295 (Power of local authority to grant charging orders);

PART V —*cont.*

Section 296 (Summary proceedings for offences);
Section 297 (Continuing offences and penalties);
Section 304 (Judges and justices not to be disqualified by liability to rates);
Section 328 (Powers of Act to be cumulative);
Section 329 (Saving for certain provisions of the Land Charges Act 1925):

Provided that the said sections 277 287 289 291 293 294 295 and 329 shall only apply to the provisions contained in Part III (Sanitation and buildings) of this Act.

(2) Section 284 (Authentication of documents) of the Act of 1936 shall extend and apply in relation to any enactment for the time being in force in the borough as if such section were incorporated in that enactment and in terms made applicable thereto.

(3) Subsection (1) of section 105 (Authentication and service of notices) of the Newbury Corporation Act 1925 is hereby repealed.

Saving for town and country planning.

21. This Act shall be deemed to be an enactment passed before and in force at the passing of the Town and Country Planning Act 1947 for the purposes of subsection (4) of section 13 and subsection (1) of section 118 of that Act.

Costs of Act.

22.—(1) The costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act as taxed by the taxing officer of the House of Lords or of the House of Commons shall be paid by the Corporation.

(2) The Corporation may borrow without the consent of any sanctioning authority the sum requisite for the payment of the said costs charges and expenses and they shall repay all moneys so borrowed within such periods as the Corporation may determine not exceeding five years from the passing of this Act.

(3) The provisions of Part IX of the Act of 1933 so far as they are not inconsistent with this Act shall extend and apply to money borrowed under this section as if it were borrowed under the said Part IX and the period fixed by this section for the repayment of the money borrowed shall as respects that money be the fixed period for the purpose of the said Part IX.

Table of Statutes referred to in this Act

Short title	Session and chapter
Lands Clauses Consolidation Act 1845...	8 & 9 Vict. c. 18.
Newbury Cemetery Act 1847	10 & 11 Vict. c. ccxciii.
Public Health (Interments) Act 1879 ...	42 & 43 Vict. c. 31.
Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo. 5 c. 57.
Land Charges Act 1925	15 Geo. 5 c. 22.
Newbury Corporation Act 1925	15 & 16 Geo. 5 c. c.
Local Government Act 1933	23 & 24 Geo. 5 c. 51.
Public Health Act 1936	26 Geo. 5 and 1 Edw. 8 c. 49.
Food and Drugs Act 1938...	1 & 2 Geo. 6 c. 56.
Town and Country Planning Act 1947 ...	10 & 11 Geo. 6 c. 51.
Lands Tribunal Act 1949	12 & 13 Geo. 6 c. 42.
Arbitration Act 1950	14 Geo. 6 c. 27.

PRINTED BY HENRY GEORGE GORDON WELCH, C.B.E.
Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

LONDON : PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

Price 9*d.* net

PRINTED IN GREAT BRITAIN

(78502)

Newbury Corporation Act, 1953

1 & 2 ELIZ. 2 **Ch. xiii**

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section
1. Short title.
2. Division of Act into Parts.
3. Incorporation of Lands Clauses Acts.
4. Interpretation.

PART II

TRANSFER OF CEMETERY UNDERTAKING

5. Transfer of cemetery undertaking.

PART III

SANITATION AND BUILDINGS

6. Sewers for draining Corporation property.
7. Abandoned drains to be cut off.
8. Food storage accommodation.
9. Provision of bathrooms.
10. As to defective premises.

PART IV

MISCELLANEOUS

11. Extinction of certain rights over and use of Northcroft.
12. Compensation for rights extinguished.
13. Application of provisions relating to commons.
14. Power to Corporation to borrow etc. for development of corporate land.
15. Collection and recovery of water rates and charges.
16. As to recovery summarily of sums due for water fittings.
17. Robes of office.

PART V

GENERAL

18. Restriction on right to prosecute.
19. Appeals.
20. Application of provisions of Act of 1936.
21. Saving for town and country planning.
22. Costs of Act.