Saint George, Botolph Lane Churchyard Act 1968

CHAPTER xv

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Sale, etc., of scheduled land and application of proceeds.
4. Discharge of trusts, etc., and saving for private rights.
5. Power to use scheduled land for other purposes.
6. Removal of human remains from scheduled land.
7. Saving for town and country planning.
8. Costs of Act.

SCHEDULE—Description of land referred to in this Act.

ELIZABETH II



1968 CHAPTER xv

An Act to free the churchyard appurtenant to the former church of Saint George, Botolph Lane in the city of London from the restrictions attaching to it as a disused burial ground in the city of London; to authorise the disposition thereof and the use thereof for other purposes; and for purposes incidental thereto.

[3rd July 1968]

WHEREAS the land described in the Schedule to this Act (hereafter called "the scheduled land") comprises the churchyard of the former church of Saint George, Botolph Lane in the city of London (hereafter called "the former church"):

And whereas the former church, which was situate on land adjacent to the scheduled land, was demolished in or about the year 1904:

And whereas, by virtue of a reorganisation scheme for the city of London made under the Reorganisation Areas Measure, 1944, and coming into force on the 2nd February, 1954, the former parish of Saint George, Botolph Lane now forms part of the united parish (hereafter called "the united parish") of Saint Mary at Hill with Saint Andrew Hubbard Eastcheap, Saint George Botolph Lane and Saint Botolph by Billingsgate: 1944 No. 1.

And whereas the parish church of the united parish is the church of Saint Mary at Hill, which itself replaces an ancient church destroyed in the Great Fire of London in 1666:

And whereas the freehold of the scheduled land is now vested in the incumbent of the benefice of the united parish, the present incumbent thereof being the Reverend Brian Andrew Campbell Kirk-Duncan, Doctor of Philosophy:

And whereas burials in the said churchyard were discontinued by Order in Council of Her late Majesty Queen Victoria dated the 15th November, 1853:

And whereas it is expedient that the provisions in this Act contained with respect to the sale, leasing, use and disposition of the scheduled land and the removal therefrom of any human remains interred therein, and the application of the proceeds of such sale, leasing or other disposition, should be enacted:

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

And whereas the Right Reverend and Right Honourable Father in God, Robert, by divine permission Lord Bishop of London, has consented to the provisions of this Act:

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:—

Short title.

1. This Act may be cited as the Saint George, Botolph Lane Churchyard Act 1968.

Interpretation.

2.—(1) In this Act, unless there be something in the subject or context repugnant to such construction—

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

" the diocese " means the diocese of London;

" the fund " means the London Diocesan Fund;

" the incumbent " means the incumbent for the time being of the united benefice of the parish or, during any period when that benefice is vacant, the bishop;

" the owner " means the person in whom the scheduled land or any part thereof is for the time being vested;

" the parish " means the parish of Saint Mary at Hill with Saint Andrew Hubbard Eastcheap, Saint George Botolph Lane and Saint Botolph by Billingsgate;

" the parish church " means the church of Saint Mary at Hill in the parish;

" the parochial church council " means the parochial church council of the parish;

" the rectory " means the existing house of residence for the incumbent situate at Saint Mary at Hill in the city of London;

" the scheduled land " means the land described in the Schedule to this Act comprising the churchyard appurtenant to the former church of Saint George, Botolph Lane.

(2) 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.

Sale, etc., of scheduled land and application of proceeds.

3.—(1) As from the passing of this Act the incumbent may sell, lease or otherwise dispose of the scheduled land, or any part thereof, for such price or consideration, in such manner and upon and subject to such terms and provisions as the incumbent, with the approval of the fund, may think fit.

(2) The incumbent shall pay or cause to be paid to the fund the proceeds of any disposition effected under the powers conferred by subsection (1) of this section and all moneys so received by the fund shall be applied as follows:—

(*a*) in defraying the costs, charges and expenses of the preparing, applying for, obtaining and passing of this Act or otherwise in relation thereto pursuant to section 8 (Costs of Act) of this Act and reimbursing to the incumbent the costs and expenses incurred by him in relation to any disposition of the scheduled land or any part thereof;

(*b*) in defraying the costs and expenses of the removal and reinterment or cremation of human remains and removal and re-erection or disposal of monuments or tombstones under section 6 (Removal of human remains from scheduled land) of this Act;

(*c*) as to eighteen thousand pounds thereof, in defraying the cost of repairs to the fabric of the parish church and repaying moneys already advanced by the fund to the parochial church council for that purpose;

(*d*) as to eighteen thousand five hundred pounds thereof, or such lesser sum as may be necessary for this purpose, in defraying the cost of the rebuilding of the organ constructed by William Hill in or about the year 1848 in the parish church and of the replacement, repair or maintenance of any furniture or equipment ancillary to the organ;

(*e*) as to one thousand pounds thereof, or such lesser sum as may be necessary for this purpose, in defraying the cost of repairs to or maintenance of the seventeenth century clock installed in the tower of the parish church, extending over the roof thereof and projecting over the public highway known as Saint Mary at Hill;

(*f*) as to two thousand seven hundred pounds thereof, or such lesser sum as may be necessary for this purpose, in defraying the cost of reglazing windows in the parish church;

(*g*) as to seven thousand five hundred pounds thereof, in defraying the cost of works of improvement and modernisation to the rectory and repaying moneys already advanced by the fund to the incumbent for that purpose;

and any remaining balance shall be applied by the fund—

(*h*) as to the first thirty thousand pounds thereof—

(A) as to twenty thousand pounds thereof, in establishing a fund to be held upon trust to pay the income therefrom to the parochial church council who shall apply the same in defraying the cost of maintaining the services in the parish church and the cost of repairs to the fabric of the parish church and to apply the capital thereof (to such extent as the fund may think fit) in defraying, at the request of the parochial church council, the cost of repairs to the fabric of the parish church;

(B) as to ten thousand pounds thereof, in establishing a fund to be held upon trust to pay the income therefrom to the parochial church council who shall apply the same in defraying, at the request of the incumbent, any expenses incurred by the incumbent for ecclesiastical purposes which are charitable and are connected with the benefice of the parish or the activities of the parish;

(*i*) as to the next eight thousand pounds thereof, in establishing a fund to be held upon trust to apply the income therefrom in defraying, at the request of the parochial church council, the cost of repairs to the roof of the parish church, and (to such extent as the fund may think fit) to apply the capital thereof, at the request of the parochial church council, for the said purpose;

(*j*) as to any residue thereof, for such ecclesiastical purposes within the diocese as may be charitable and as the bishop may from time to time approve.

(3) (*a*) If the moneys paid to the fund pursuant to subsection (2) of this section shall be insufficient to provide in full for the expenditure of the several sums referred to in paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) of that subsection, the sums to be applied under any or all of paragraphs (*c*), (*d*), (*e*), (*f*) and (*g*) thereof shall be reduced to such extent as the fund and the incumbent may agree.

(*b*) If the moneys paid to the fund pursuant to subsection (2) of this section shall be insufficient to provide a total sum of thirty thousand pounds to be applied by the fund in the manner laid down by sub-paragraphs (A) and (B) of paragraph (*h*) of that subsection, the sums to be applied under each of those sub-paragraphs shall be reduced pro rata.

Discharge of trusts, etc., and saving for *private rights*.

4. As from the passing of this Act the scheduled land shall be freed and discharged from all trusts, uses, obligations, disabilities and restrictions whatsoever (including the effects of consecration) which immediately before the passing of this Act attached thereto under ecclesiastical law or otherwise, and 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 said land or any part thereof, and from all other trusts, uses, obligations, disabilities and restrictions whatsoever which attached thereto immediately before the passing of this Act by reason of the said land or any part thereof having been or formed the enclosure of a church, or having been used or set apart for the interment of human remains:

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

Power to use scheduled land for other purposes.

5. 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 land, or any part thereof, for any purpose in like manner as if no part thereof had ever been or formed the enclosure of a church, or been used or set apart for the interment of human remains.

Removal of human remains from scheduled land.

6.—(1) Before the owner begins to use any part of the scheduled land for—

(*a*) the erection thereon or thereunder of any building; or

(*b*) 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 owner shall give notice of his intention to remove, or cause to be removed, from the scheduled land the remains of any deceased person found to have been interred therein by publishing a notice once in each of two successive weeks in a newspaper circulating in the city of London with an interval between publications of not less than six days, and shall display a like notice in a conspicuous place on the scheduled land and such notice shall have embodied in it the substance of subsections (2), (3), (4), (5), (6), (7) and (8) of this section.

(2) 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 land may give notice in writing to the 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 to any regulations made by the bishop, to 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.

(3) If any person giving such notice as aforesaid shall fail to satisfy the owner 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 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.

(4) The expenses of such 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 owner such sum to be apportioned if necessary equally according to the number of remains in the grave.

(5) If within the aforesaid period of two months no such notice as aforesaid shall have been given to the owner in respect of the remains in any grave, or if after such notice has been given the person giving the same shall fail within one month to cause such remains to be removed in compliance with the provisions of this section, and with any regulation of the bishop, the owner without any faculty for that purpose, shall remove the remains

of the deceased person and cause them to be interred in such other consecrated burial ground or cemetery in which burials may legally take place as, subject to the consent of the bishop, the owner thinks suitable for the purpose (but, in the case of interment in a churchyard, the previous consent of the incumbent of the benefice concerned shall also be required) or cremated in such crematorium as the owner thinks suitable for the purpose.

(6) Upon any removal of remains from the scheduled land a certificate of removal and reinterment or cremation shall be sent to the Registrar General by the owner 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 showing the particulars of each removal separately.

(7) Any monument or tombstone relating to the remains of any deceased person removed under this section shall, at the expense of the owner, be removed and re-erected at the place of reinterment or cremation of such remains or at such place as the bishop may direct on the application (if any) of such personal representative or relative as aforesaid or failing such application on the application of the owner and the owner shall cause a record to be made of each monument and tombstone taken from the scheduled land under this section containing—

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

(ii) if it is intended to preserve the monument or 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 monument or 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 monument or tombstone if the owner considers that, by reason of its ruinous condition, it is unsuitable for re-erection and any such monument or tombstone may be disposed of in such manner as the owner, subject to the faculty jurisdiction within the diocese, may direct.

(8) The removal of the remains of any deceased person under this section shall, in relation to matters falling within his functions, be carried out under the supervision and to the reasonable satisfaction of the medical officer of health of the city of London.

Saving for town and country planning. 1962 c. 38.

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.

8. 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 fund.

SCHEDULE

DESCRIPTION OF LAND REFERRED TO IN THIS ACT

Section 2.

A piece of land in the city of London containing 1,435 square feet thereabouts, situated on the western side of Botolph Lane and bounded by a line commencing at a point along the southern boundary the site at the north-eastern extremity of No. 9 Botolph Lane, and ceeding in a westerly direction along the northern boundary of o. 9 Botolph Lane for a distance of 24′ 7¾″ or thereabouts, thence a northerly direction for a distance of 2′ 10¾″ or thereabouts, thence a westerly direction for a distance of 18′ 3″ or thereabouts, thence in outherly direction for a distance of 7′ 0½″ or thereabouts, thence in esterly direction for a distance of 31′ 3″ or thereabouts, thence in a utherly direction for a distance of 10″ or thereabouts, thence in a sterly direction to a point at the south-east corner of No. 29 Pudding ne for a distance of 2′ 9″ or thereabouts, thence in a northerly ection at the rear of No. 29 Pudding Lane to the south-west corner No. 3 St. George's Lane for a distance of 38′ 6½″ or thereabouts, nence in an easterly direction at the rear of No. 3 St. George's Lane a distance of 6′ 0″ or thereabouts, thence in a south-easterly direction a distance of 1′ 10″ or thereabouts, thence in an easterly direction a distance of 15′ 3″ or thereabouts, thence in a southerly direction ng the western boundary of No. 4 St. George's Lane for a distance 22′ 10½″ or thereabouts, thence in an easterly direction at the rear No. 4 St. George's Lane for a distance of 31′ 0″ or thereabouts, nce in a northerly direction for a distance of 4½″ or thereabouts, hence in an easterly direction to Botolph Lane for a distance of 7¾″ or thereabouts, thence in a southerly direction along the estern boundary of Botolph Lane for a distance of 12′ 0½″ or reabouts to the point of commencement.

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