

Swavesey Bye-ways Act 1984

CHAPTER xii

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ELIZABETH II



1984 CHAPTER xii

An Act to enable the South Cambridgeshire District Council to make financial provision for the maintenance of the Swavesey bye-ways and to raise a special charge on certain lands and on the Swavesey Parish Council for the payment of part of the costs incurred; to empower the Swavesey Parish Council to contribute towards the costs incurred and towards the costs of the promotion of the Bill for this Act; and for other purposes.

[12th July 1984]

WHEREAS—

(1) By the local Act whereof the regnal year and chapter is 1 Vict. cap. *6* and long title is "An Act for inclosing Lands in the Parish of Swavesey in the County of Cambridge" provision was made for enclosing certain lands and grounds in the parish of Swavesey in the county of Cambridge and commissioners were appointed for carrying the said Act into execution: 1838 c. *6*.

(2) The commissioners in their award in pursuance of the provisions of the said Act set out and appointed a hauling way

or towing path and bridle-way and also private carriage roads and drift-ways and public footways or paths, and in respect of those ways, paths and roads the award contained the following provisions, namely that the said hauling way or towing path and bridle-way and also the said private carriage roads and drift-ways and public footways or paths so by them set out and appointed should for ever thereafter be supported, maintained and kept in repair by the surveyor or surveyors for the time being of the highways within the said parish of Swavesey by and at the expense of the owners and proprietors of the lands and grounds in Swavesey aforesaid by the said Act directed to be divided and allotted and the respective tenants and occupiers thereof in the same proportions that they contribute to the repair of the public roads:

(3) The duties of the surveyor or surveyors of highways for the said parish of Swavesey are now vested in the South Cambridgeshire District Council:

S.R. & O.1931/333. (4) By the Swavesey (Inclosure Award) Order 1931 it was provided that the value of the lands on which the road maintenance award was made should be based on the gross annual value for income tax purposes:

(5) Land being no longer assessed in the manner contemplated by the said Order of 1931 and there now being no effective machinery for determining new or revised assessments, it is expedient that the assessment of the lands be put on a more effectual basis:

(6) It is expedient that the other provisions contained in 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 Local Government Act 1972 have been observed: 1972 c. 70.

(9) A plan showing the lands to be rendered liable to the charge to be authorised under the powers of this Act, and the limits of the area within which the charge may be imposed, and defining the bye-ways subject to the provisions of this Act, has been duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office, House of Commons, and with the proper officer of the Cambridgeshire County Council, which plan is referred to in this Act as the deposited plan:

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:—

Citation and commencement.

1.—(1) This Act may be cited as the Swavesey Bye-ways Act 1984.

(2) This Act shall come into operation on the expiry of a period of one month beginning with the date on which it is passed.

Interpretation.

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

"bye-ways" means so much of the hauling way or towing path and bridle-way, private carriage roads and drift-ways, and public footways or paths specified in the road maintenance award, shown coloured green on the deposited plan;

"bye-ways chargepayer" has the meaning ascribed to it in section 6 (Occupier to be bye-ways chargepayer) of this Act, and "bye-ways chargepayers" shall be construed as the total of all bye-ways chargepayers;

"district council" means the South Cambridgeshire District Council;

"expenditure" includes costs of administration and collection of charges imposed under this Act;

"hereditament" means a unit of land falling within subsection (5) of section 5 (Bye-ways charges) of this Act which is or could fall to be included as a separate item in the list prepared under section 7 (List) of this Act;

"inclosure area" means the area to which the road maintenance award relates;

"parish council" means the Swavesey Parish Council;

"proper officer" means the officer appointed by the district council to act in connection with their functions under this Act;

"road maintenance award" means the award of the Commissioners of Inclosure made in 1838 under the Act whereof the long title is, "An Act for inclosing Lands in the Parish of Swavesey in the County of Cambridge". 1838 c. 6.

Duty to make financial provision for maintenance of bye-ways.

3. The district council shall make financial provision for the maintenance of the bye-ways.

Determination of expenses.

4.—(1) Not later than 31st March in each year, the district council shall determine the sum estimated by them to be the sum required to meet the expenditure expected to be incurred by them in the discharge of their functions under this Act during the financial year beginning with 1st April next following their determination, after taking into account expenditure previously incurred and any money in the fund or likely to come into the fund during that financial year.

(2) In this section "the fund" means the moneys held in the account authorised by section 16 (Accounts) of this Act.

Bye-ways charges.

5.—(1) For the purpose of meeting a proportion of the expenses incurred in the discharge of their functions under this Act, the district council may not later than 1st April at the commencement of the financial year to which the expenses relate fix and demand such charges as they resolve—

(*a*) from the bye-ways chargepayers; and

(*b*) from the parish council.

(2) The district council may recover such charges as they demand under subsection (1) above.

(3) The amount to be demanded from the bye-ways chargepayers shall be 50 per centum of the sum determined under section 4 (Determination of expenses) of this Act.

(4) The amount to be demanded from the parish council shall be 16 per centum of the sum determined under section 4 (Determination of expenses) of this Act.

(5) The charges demanded by the district council under paragraph (*a*) of subsection (1) above shall be at a uniform amount for each hectare or part thereof for each hereditament exceeding 0·5 of a hectare which is—

(*a*) situate within the inclosure area; and

(*b*) used for the purposes of agriculture or the working of minerals.

(6) For the purposes of paragraph (*a*) of subsection (1) above a resolution of the district council as respects the charges to be demanded shall be taken to be validly determined if such resolution specifies the amount per hectare at which the charges are to be levied, notwithstanding that the resolution is made without reference to individual hereditaments.

(7) In this section—

"agriculture" has the meaning given to it by section 109 of the Agriculture Act 1947; and 1947 c. 48.

"minerals" has the meaning given to it by the Town and Country Planning Act 1971. 1971 c. 78.

Occupier to be bye-ways chargepayer.

6.—(1) The occupier of each hereditament which is included in a list compiled under section 7 (List) of this Act shall be a bye-ways chargepayer.

(2) The district council in demanding the charges resolved under section 5 (Bye-ways charges) of this Act in respect of bye-ways chargepayers shall demand in respect of each bye-ways chargepayer the amount appropriate to the area of his hereditament calculated in accordance with subsection (5) of that section.

List.

7.—(1) For the purposes of this Act the district council shall prepare and maintain a list of the hereditaments on which charges may be demanded pursuant to subsection (5) of section 5 (Bye-ways charges) of this Act, and when necessary cause it to be altered in accordance with the following provisions of this Act.

(2) There shall be inserted in the list—

(*a*) a number allocated to each hereditament;

(*b*) a description of the hereditament by reference to its use; and

(*c*) the area of the hereditament.

Alterations to list.

8.—(1) The district council may propose an alteration to the list.

(2) The proposal may be made if the district council is of the opinion that there is an error in the list relating to—

(*a*) the inclusion or exclusion of any hereditament in or from the list; or

(*b*) the area ascribed in the list to any hereditament.

(3) If the district council propose an alteration to the list under subsection (1) above they shall serve on any bye-ways chargepayer or occupier affected, notice of the proposal, and on the parish council if they are affected.

(4) A person aggrieved by a proposal to alter the list under subsection (1) above on the ground of any matter specified in paragraphs (*a*) or (*b*) of subsection (2) above may on that

ground, within 28 days of being notified of the proposal, counter-propose that—

(*a*) the proposal to alter the list be not made; or

(*b*) the proposal to alter the list be amended in the manner specified in the counter-proposal.

(5) The counter-proposal shall be served on the proper officer and at the same time notice of the counter-proposal shall be served on any bye-ways chargepayer or occupier affected by the counter-proposal, and on the parish council.

(6) The parish council, any bye-ways chargepayer or occupier affected by a counter-proposal may, on being notified of the counter-proposal under subsection (5) above, serve an objection to the counter-proposal on the proper officer within 14 days of being so notified.

(7) The proper officer shall consider the counter-proposal and any objection thereto and within two months of the service of the counter-proposal or objection thereto shall execute one of the following acts:—

(*a*) approve the alteration to the list as proposed by the district council; or

(*b*) not approve the alteration to the list as proposed by the district council; or

(*c*) make an amendment to the alteration to the list in the manner proposed by the person serving the counter-proposal;

and in all cases shall give in writing notice of his decision and of the reasons for his decision to the person who served the counter-proposal or the objection.

(8) A person who is aggrieved by—

(*a*) the inclusion or exclusion of any hereditament in or from the list; or

(*b*) the area ascribed in the list to any hereditament;

may on that ground, at any time, make a proposal for the alteration of the list.

(9) Every proposal made under subsection (8) above shall be served—

(*a*) in the case where it is made by a bye-ways chargepayer on the proper officer and, at the same time, notification thereof upon any occupier or other bye-ways chargepayer affected by the proposal and on the parish council if they are so affected;

(*b*) in the case where it is made by an occupier on the proper officer and, at the same time, notification thereof on any bye-ways chargepayer or other occupier affected by the proposal, and on the parish council if they are so affected;

(*c*) in the case where it is made by the parish council on the proper officer and, at the same time, notification thereof on any bye-ways chargepayer or occupier affected by the proposal.

(10) The parish council or bye-ways chargepayer or occupier affected by a proposal made under subsection (8) above may, within 14 days of receiving notification under subsection (9) above, serve an objection on the proper officer, and if they do so, or he does so, they or he (as the case may be) shall at the same time also serve a copy thereof on the person making the proposal.

(11) The proper officer shall consider every proposal and objection thereto and within two months of the service of such proposal or objection shall either—

(*a*) amend the list in the manner specified in the proposal; or

(*b*) not amend the list;

and shall give—

(i) to the person who made the proposal, notice of his decision together with reasons for his decision; and

(ii) to any person who gave notice of objection to the proposal, notice of his decision.

(12) Any proposal, counter-proposal or objection served under this section shall—

(*a*) be in writing;

(*b*) specify the grounds on which it is made; and

(*c*) include a statement of the facts upon which it is based.

Arbitration.

9.—(1) A person aggrieved by the decision of the proper officer under section 8 (Alterations to list) of this Act may within 28 days of being notified of that decision give written notice to the proper officer of his intention to refer the difference to arbitration.

(2) Where notice is given in accordance with subsection (1) above any difference between the person aggrieved and the proper officer shall be referred to and settled by a single arbitrator to be agreed between the person aggrieved and the proper officer or failing agreement to be appointed on the

application of either the person aggrieved or the proper officer (after notice in writing to the other) by the President of the Royal Institution of Chartered Surveyors.

Person aggrieved.

10. No person shall be a person aggrieved for the purposes of section 8 (Alterations to list) or section 9 (Arbitration) of this Act unless he is—

(*a*) a bye-ways chargepayer;

(*b*) an occupier; or

(*c*) the parish council;

and is affected by any relevant entry in or omission from the list, or any proposal for the alteration of the list, any counter-proposal or any objection thereto.

Amendments to list.

11.—(1) The proper officer shall amend the list in accordance with any determination made by an arbitrator appointed under section 9 (Arbitration) of this Act.

(2) Any amendment to the list made pursuant to this section or either subsection (7) or (11) of section 8 (Alterations to list) of this Act shall take effect from the date of the happening giving rise to the proposal, provided that no amendment shall take effect earlier than the commencement of the financial year in which the proposal was made.

Publication of amount of charge.

12. Notice of the amount per hectare of the charge resolved under subsection (5) of section 5 (Bye-ways charges) of this Act shall be given within 7 days of the passing of the resolution by the district council in the manner prescribed by section 4 (2) (means of publicising notice of rates) of the General Rate Act 1967.

1967 c. 9.

Demand note.

13.—(1) The district council shall send to every bye-ways chargepayer a demand note containing information with respect to the following matters:—

(*a*) the area of the hereditament upon which the charge is assessed; and

(*b*) the amount per hectare of the charge; and

(*c*) the charge demanded; and

(*d*) a statement informing the bye-ways chargepayer of his rights under section 8 (Alterations to list) of this Act.

(2) A bye-ways chargepayer shall be liable to pay the charge demanded in the demand note, notwithstanding that a proposal has been made in respect of the hereditament and not finally determined.

(3) Where any amendment to the list is made, and that amendment affects the amount of any charge demanded in respect of any hereditament in accordance with the list, then the difference shall—

(*a*) if too much has been paid, be repaid or allowed;

(*b*) if too little has been paid, be paid on demand.

Recovery of charges.

14.—(1) The Council may recover any charge assessed from the person from whom it was due 14 days after it has been demanded of him.

(2) In proceedings for the recovery of such a charge a bye-ways chargepayer shall not be entitled to raise by way of defence any matter which could have been the subject of a proposal for the alteration of the list pursuant to subsection (2) of section 8 (Alterations to list) of this Act.

Parish council to pay charges.

15.—(1) It is hereby declared that the parish council are empowered to pay to the district council the sum demanded of them by the district council under section 5 (Bye-ways charges) of this Act.

(2) Where in any financial year the parish council have issued a precept to the district council they shall not issue any further precept to meet the amount of the charges demanded of them under section 5 (Bye-ways charges) or section 20 (Costs of Act) of this Act.

Accounts.

16.—(1) The district council shall maintain a revenue account of their income and expenditure under this Act.

(2) It shall be the duty of the district council to discharge their functions under this Act so as to secure that, taking one year with another, their revenue in respect of this Act is not less than sufficient to meet their total outgoings in respect of this Act.

(3) Moneys recovered through the exercise of powers authorised under this Act shall not form part of the general rate fund of the district council.

Local land charge.

17. Any charge made in respect of a hereditament under section 5 (Bye-ways charges) of this Act shall be a local land charge.

Repeal and revocation. 1838 c. *6*.

18.—(1) The Act of 1838 whereof the long title is "An Act for inclosing Lands in the Parish of Swavesey in the County of Cambridge" is repealed.

S.R. & O. 1931/ 333.

(2) The Swavesey (Inclosure Award) Order 1931 is revoked.

(3) In the road maintenance award for the reference to the same proportions that they would contribute to the general rate if subsection (1) of section 67 of the Act of 1929 (being the Local Government Act 1929) had not been passed and that rate were levied on the ascertained value as defined in the Order (being the Swavesey (Inclosure Award) Order 1931) there shall be substituted a reference to the manner prescribed under section 5 (Bye-ways charges) of this Act.

1929 c. 17.

S.R. & O. 1931/ 333.

Parish council to pay part of cost of Act.

19. The parish council shall be empowered to contribute to the costs of this Act.

Costs of Act.

20.—(1) The costs, charges and expenses preliminary to, and of and incidental to, the preparing, applying for and obtaining of this Act, or otherwise in relation thereto shall be paid by the district council, who may recover the following proportions of the costs:—

(*a*) 50 per centum from the bye-ways chargepayers;

(*b*) 16 per centum from the parish council.

(2) For the purpose of this section the district council may fix, demand, take and recover a special charge as if that charge were a charge to which section 5 (Bye-ways charges) of this Act relates.

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