



# Woodgrange Park Cemetery Act 1993

## 1993 CHAPTER xvi

An Act to remove, as respects part of the land comprised in Woodgrange Park Cemetery, all trusts, obligations, disabilities and restrictions that are attached to that land by reason of its being used or set apart for the interment of human remains or by reason of its being a cemetery or disused burial ground; and for related purposes. [5th November 1993]

### WHEREAS—

- (1) Woodgrange Park Cemetery in the London Borough of Newham (hereinafter referred to as “the cemetery”) is an unconsecrated cemetery established in private ownership in the nineteenth century and is now owned by Badgehurst Limited, a company limited by shares:
- (2) The cemetery was acquired by Badgehurst Limited in a considerable state of dereliction, and is in great need of work to restore it to a fit and proper condition:
- (3) The release of lands within the cemetery for housing development would provide capital to facilitate the restoration of the remainder of the cemetery as a cemetery and garden of remembrance, and the cemetery would benefit from the provision of a caretaker’s house within its grounds:
- (4) The lands at the cemetery described in the Schedule hereto (hereinafter referred to as “the scheduled lands”) are not required for burial purposes and have not been used for the burial of human remains since January 1974:
- (5) The scheduled lands each constitute a disused burial ground within the meaning of the Disused Burial Grounds Act 1884:
- (6) The London Borough of Newham has resolved to grant outline planning consent for the housing development and caretaker’s house here referred to subject to the making of an agreement under section 106 of the Town and Country Planning Act 1990:
- (7) It is expedient that the scheduled lands should be freed from all restrictions prohibiting the proposed development so as to enable the provision of the intended housing development and caretaker’s house subject to the grant of any requisite planning consent:

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- (8) It is expedient that the provisions contained in this Act with respect to the removal of human remains, tombstones and monuments from the scheduled lands should be enacted:
- (9) It is expedient that the other provisions contained in this Act should be enacted:
- (10) The objects of this Act cannot be attained 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, that is to say:—

## **1 Short title**

This Act may be cited as the Woodgrange Park Cemetery Act 1993.

## **2 Interpretation**

- (1) In this Act, unless the context otherwise requires—
- “Company” means Badgehurst Limited or other person in whom for the time being the cemetery is vested;
- “council” means the council of the London Borough of Newham or a nominee appointed by it;
- “developer” means the Company or any other person using, developing or dealing with the scheduled lands;
- “scheduled lands” means the lands described in Part I and Part II of the Schedule hereto edged red and green respectively on the signed plan;
- “signed plan” means the plan signed in triplicate by Viscount Dunrossil, CMG, the chairman of the committee of the House of Lords to whom the Bill for this Act was referred and deposited respectively at—
- (a) the office of the Clerk of the Parliaments, House of Lords;
  - (b) the Private Bill Office of the House of Commons; and
  - (c) the registered office of the Company.
- (2) If there be any discrepancy between the Schedule to this Act and the signed plan, the signed plan shall prevail.

## **3 Discharge of trusts and restrictions affecting scheduled lands**

- (1) Subject to the provisions of subsection (3) below the scheduled lands shall be freed and discharged from all trusts, obligations, disabilities and restrictions whatsoever which immediately before the passing thereof attached to the scheduled lands by reason of the scheduled lands, or any part thereof, being used or set apart for the interment of human remains or being part of a cemetery or a disused burial ground within the meaning of the Disused Burial Grounds Act 1884 and the provisions of that Act shall cease to apply to the scheduled lands.
- (2) As compensation for the loss of any rights of burial under this section the Company shall, on a claim being made to it by the registered owner of a right of burial—

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- (a) enter into an agreement with such owner for the exercise of such right in respect of a grave space elsewhere within the cemetery to be approved by such owner; or
  - (b) failing such agreement as aforesaid pay to him such sum representing the value of that right as may be agreed between the Company and the owner or, in default of agreement, determined by arbitration.
- (3) Subsection (1) above shall only take effect upon the sum of £900,000 being set aside by the developer and held on trust that it shall be applied towards the restoration and future maintenance of the cemetery in accordance with the remaining provisions of this section.
- (4) £500,000 of the said £900,000 shall be paid by the developer to an interest bearing bank account held and operated by the Company jointly with the council, such monies to be held on trust by the Company and the council and applied for the maintenance of the cemetery following the completion of its restoration in such manner as may be agreed between the Company and the council.
- (5) £400,000 of the said £900,000 shall be paid by the developer to a second interest bearing bank account held and operated by the Company jointly with the council, such monies to be held on trust by the Company and the council and applied towards the restoration of the cemetery and in particular towards the cost of the clearance of undergrowth, replacement boundary fencing, roadway works and a new caretaker's house in such manner as may be agreed between the Company and the council.
- (6) Any interest arising on the monies paid by the developer in accordance with subsection (4) above shall belong to the Company until the earlier of—
  - (a) the date on which the work of restoring the cemetery has been completed; or
  - (b) five years from the date on which the said monies have been paid by the developer,and interest arising thereafter shall accrue to the capital and be applied for the maintenance of the cemetery pursuant to subsection (4) above.
- (7) (a)

In this subsection “the agreed works” means such part of the works for the restoration of the cemetery as is agreed between the council and the Company as works to be done for the purposes of this subsection and “the agreed date” means the date agreed between the council and the Company as the date for the completion of the agreed works;

  - (b) Subject to paragraph (c) below any interest arising on the monies paid by the developer in accordance with subsection (5) above shall accrue to the bank account there referred to until the completion of the agreed works, and interest arising thereafter shall belong to the Company;
  - (c) If the agreed works have not been completed by the agreed date, interest arising on the monies paid by the developer in accordance with subsection (5) above shall continue to accrue to the said bank account until all of the works for the restoration of the cemetery agreed between the council and the Company have been completed.
- (8) For the purposes of subsections (6) and (7) above, works are to be taken as completed when they are certified as completed in such manner as may be agreed between the council and the Company.

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- (9) Subsection (4) above shall not be construed so as—
- (a) to prevent the Company and the council following completion of the restoration of the cemetery from transferring the monies jointly held by them under that subsection to trustees to be held by them on trust for the maintenance of the cemetery thereafter; or
  - (b) to relieve the Company from any obligation to maintain the cemetery which exists apart from that subsection.
- (10) Any difference arising between the Company, the developer and the council under this section (other than a difference as to its construction) shall be referred to and settled by arbitration.

#### **4 Removal of human remains**

- (1) Before the scheduled lands are used for any purpose other than as a burial ground, the developer shall remove, or cause to be removed therefrom the remains of all deceased persons interred therein in accordance with the following provisions of this section.
- (2) Before any such remains are removed from the scheduled lands the developer shall give notice in accordance with subsection (3) below of the intended removal of the remains from the scheduled lands.
- (3) Notice under subsection (2) above shall describe the lands from which the remains of all deceased persons are to be removed 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 London Borough of Newham;
  - (b) displaying it in a conspicuous place upon or near to the lands referred to; and
  - (c) notifying in writing the Commonwealth War Graves Commission.
- (4) At any time within 8 weeks after the first publication of a notice under subsection (2) above, any person who is a personal representative or relative of any deceased person whose remains are interred in the lands referred to may give notice in writing to the developer 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 reinterred in any burial ground or cemetery in which burials may legally take place, or to be removed to and cremated in any crematorium, and forthwith after such reinterment or cremation shall provide to the developer 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 developer 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 developer shall defray the reasonable expenses of the removal and reinterment or cremation of such remains, with any difference as to the amount of such expenses being referred to and settled by arbitration.
- (7) If—

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- (a) within the said period of 8 weeks no notice under subsection (4) above has been given to the developer in respect of any remains in the scheduled lands; 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 subsection (5) above any person, other than the developer, 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 developer shall remove the remains and cause them to be reinterred elsewhere in the cemetery in such position as the developer with the written approval of the Commonwealth War Graves Commission thinks suitable for the purpose:

Provided that if any personal representative or relative has given notice under subsection (4) above and has satisfied the developer that he is such personal representative or relative as he claims to be and that the remains in question can be identified but does not remove the remains, the developer shall comply with any reasonable request he may make in relation to the removal and reinterment or cremation of the remains.

- (8) Upon the reinterment or cremation of any remains under this section, a certificate of reinterment or cremation shall be sent to the Registrar General by the developer giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated.
- (9) 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.
- (10) Any jurisdiction or power conferred on the county court by this section may be exercised by the registrar of the court.
- (11) Section 25 of the Burial Act 1857 shall not apply to a removal carried out in accordance with this section.

## **5 Tombstones, monuments, records, etc**

- (1) Subject as hereinafter provided any tombstone or monument within the scheduled lands may be removed to and be re-erected at such other place as may be agreed between the developer and any person who is a personal representative or relative of any deceased person to whom the tombstone or monument relates or in default of agreement at such place as the county court may direct on the application of either of the said parties.
- (2) Before any tombstone or monument is removed from any part of the scheduled lands the developer shall give at least 8 weeks' notice in accordance with subsection (3) below of the intended removal of the tombstone or monument from that part of the scheduled lands.
- (3) Notice under subsection (2) above shall identify the tombstone or monument and describe the part of the scheduled lands to which it relates and shall be given by publishing it once in each of two successive weeks in a newspaper circulating in the

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London Borough of Newham and by displaying it in a conspicuous place upon the scheduled lands.

- (4) The reasonable expense of removing and re-erecting any tombstone or monument under this section shall be defrayed by the developer.
- (5) The developer shall cause a record to be made of each tombstone and monument taken from any part of the scheduled lands under this section containing—
  - (a) a copy of the inscription thereon; and
  - (b) a statement naming the place where it has been re-erected;and shall deposit a copy of the record with the Registrar General.

## **6 Arbitration**

Where under any provision of this Act any difference is to be referred to and settled by arbitration, then such difference shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of one of the parties (after giving notice in writing to the other or others), by the President for the time being of the Royal Institution of Chartered Surveyors.

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## SCHEDULE

Section 2.

### DESCRIPTION OF LANDS REFERRED TO IN THE FOREGOING ACT

#### PART I

##### LAND FOR CARETAKER'S HOUSE

A piece of land of regular shape within Woodgrange Park Cemetery in the London Borough of Newham extending to 0.017 acres or thereabouts bounded by a line commencing at a point on the eastern verge of the entrance driveway at the junction with the southern edge of the pathway at a distance of 30 feet or thereabouts south of the boundary wall to Tenbury Close (hereinafter referred to as “the first fixed point”) thence proceeding in a generally south-easterly direction following the verge of the driveway for a distance of 45 feet or thereabouts thence in an easterly direction for a distance of 16 feet or thereabouts thence in a generally north-westerly direction following the line of trees for a distance of 45 feet or thereabouts thence in a westerly direction for a distance of 16 feet or thereabouts to the first fixed point.

#### PART II

##### LAND FOR HOUSING OR OTHER DEVELOPMENT

A piece of land of irregular shape within Woodgrange Park Cemetery in the London Borough of Newham extending to 3.336 acres or thereabouts bounded by a line commencing at a point (hereinafter referred to as “the second fixed point”) at the northern edge of the back of the pavement line of a property known as number 457 High Street North proceeding in a northerly direction along High Street North for a distance of 157 feet or thereabouts thence in a north-westerly direction for a distance of 147 feet or thereabouts thence proceeding in a south-south-westerly direction for a distance of 66 feet or thereabouts thence in a north-westerly direction for a distance of 564 feet or thereabouts thence proceeding in a south-south-easterly direction for a distance of 328 feet or thereabouts thence proceeding in a north-easterly direction for a distance of 312 feet or thereabouts thence in a south-south-easterly direction for a distance of 31 feet or thereabouts thence in a south-westerly direction for a distance of 59 feet or thereabouts thence in a southerly direction for a distance of 111 feet or thereabouts thence proceeding in a north-easterly direction for a distance of 374 feet or thereabouts to the second fixed point.