

# Elder Yard Chapel Chesterfield Act, 1956

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CHAPTER xlvi

An Act to enable the Trustees of the Elder Yard Chapel Chesterfield in the county of Derby to sell part of the burial ground appurtenant thereto free from restrictions and for other purposes.

[17th May 1956.]

**W**HEREAS—

(1) By an indenture of release (grounded on a lease) dated the twenty-seventh day of December one thousand six hundred and ninety-five and made between Cornelius Clarke of the one part and James Webster and five others of the other part the said Cornelius Clarke granted released and confirmed unto the said James Webster and others their heirs and assigns land in or near Elder Yard (therein called "Ellar Yard") Chesterfield in the county of Derby together with the building erected thereon to be held by them as trustees upon trust to permit the said building to be used and employed as a place of meeting for dissenting Protestants for religious worship:

(2) By an indenture dated the twenty-fourth day of March one thousand eight hundred and twenty-eight and made between the Most Noble William Spencer sixth Duke of Devonshire of the first part Isaac Wilkinson of the second part and the said Isaac Wilkinson and five others (the then acting Trustees of the chapel erected on the said land) of the third part the said Duke granted by way of exchange for other land to the Trustees of the chapel their heirs and assigns a croft of land in Chesterfield situate on the south side of Salter Gate and bounded on the west side by the chapel therein called "the Unitarian Chapel":

(3) At a meeting of the Trustees and members of the congregation of the said chapel held on the eighteenth day of September one thousand eight hundred and thirty-seven it was agreed that the said croft obtained by way of exchange from the said Duke should be appropriated and used as part of the burial ground belonging to the said chapel:

(4) By an indenture dated the twenty-first day of September one thousand eight hundred and thirty-seven and made between Robert Malkin and three others of the first part the Reverend Robert Wallace of the second part and the said Robert Malkin and twelve others (who were then the Trustees of the chapel) of the third part the parties of the first and second parts thereto conveyed first the chapel as the same was then used as a place for religious worship by a society or congregation of dissenting Protestants and secondly the land adjoining the said chapel and leading out of Salter Gate aforesaid as the same was and was intended to be at all times thereafter used as a burial ground to the said chapel together with the schoolrooms erected at the north entrance to the said chapel from Salter Gate aforesaid (all which premises contained an area of two thousand two hundred and eighty-nine square yards or thereabouts) to the said Trustees to be held upon trusts to be declared in an indenture then already prepared and engrossed and intended to bear the date the day next after the enrolment of the indenture in recital:

(5) The indenture last recited was duly enrolled in the High Court of Chancery on the twenty-sixth day of October one thousand eight hundred and thirty-seven:

(6) By an indenture dated the twenty-seventh day of October one thousand eight hundred and thirty-seven and made between the same parties as the last recited indenture it was declared that the Trustees should hold the said chapel burial ground and schoolrooms and hereditaments comprised in and conveyed by the last recited indenture upon trust—

- (a) to permit the said chapel to be used by the said society or congregation of dissenting Protestants as and for a chapel or meeting house for the worship and service of Almighty God and other religious exercises;
- (b) to permit the said schoolrooms to be used for the purpose of instructing and teaching children;
- (c) to permit such part or parts of the said land as should not be built on to be used as a burial ground for the interment of deceased members of the said society of dissenting Protestants;
- (d) to permit the said Robert Wallace to continue to act as minister during his natural life and thereafter to arrange

for the nomination and election of a new minister by such members of the congregation as might be householders;

(e) to let the pews and apply the rents thereof to the payment of insurance premiums and subject thereto to apply the same to the payment of a salary to the minister for the time being:

And it was provided that in case it should happen that there should be no further occasion to use the said chapel schoolrooms and premises or in case the said hereditaments and premises could not be legally used as a chapel or the congregation attending the said chapel should be reduced for twelve successive months to less than three persons including the minister then it should be lawful for the Trustees to sell and dispose of the said chapel burial ground schoolrooms and other buildings and that the moneys to arise from such sale should be paid and applied to such persons and for such uses as the Trustees should think proper And it was also provided that if the premises should be sold it should not be lawful for the premises to be used for any other than similar purposes to those expressed in the indenture now under recital:

(7) The said chapel was originally used by persons calling themselves Congregationalists and by persons calling themselves Presbyterians but since the year one thousand eight hundred and eighteen or thereabouts the congregation using the said chapel have called themselves Unitarians and the chapel is now registered under the Places of Worship Registration Act 1855 as a place of meeting for religious worship by a congregation of persons so calling themselves: 18 & 19 Vict. c. 81.

(8) The land lying to the south of the said chapel has as to the greater part thereof been used for the burial of human remains since about the year one thousand six hundred and ninety-five and as to the remaining part thereof lying to the east (being part of the land acquired from the said Duke in the year one thousand eight hundred and twenty-eight) been so used since the year one thousand eight hundred and thirty-seven:

(9) Burials in the most southerly part of the said burial ground were discontinued in about the year one thousand eight hundred and ninety-five (save for the burial of one person in an existing grave in the year one thousand nine hundred and fifteen) in view of the fact that the said part of the burial ground had by then become full and since then there have (save in the one case mentioned) been no further burials in this part of the burial ground:

(10) The said part of the said burial ground is more particularly described in the schedule hereto and is hereinafter called "the scheduled land":



(11) The freehold of the scheduled land was on the twenty-sixth day of November one thousand nine hundred and fifty-five vested in the Trustees of the said chapel who were then Theophilus Pearson, Michael Robert Eric Swanwick, William North Broomhead, Frank Burcher, Ernest Evans Greaves, John Gothard Richardson and Harry Sherwin Richardson:

(12) The Reverend Edric Shaw is at present the minister of the said chapel:

(13) The Trustees are not able to maintain the scheduled land in decent order owing to lack of funds:

(14) It is expedient that the scheduled land should be developed with the adjoining property as a building site:

(15) It is expedient that the Trustees of the said chapel should be authorised to dispose of the scheduled land by way of sale free from restrictions and should for that purpose be authorised to remove therefrom any human remains which are interred therein:

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

(17) The purposes 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 Elder Yard Chapel Chesterfield Act 1956.

Interpretation.

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

“the chapel” means the Elder Yard Chapel situate to the east of Elder Way Chesterfield in the county of Derby;

“the minister” means the minister for the time being of the chapel;

“the owner” means the person or persons or corporation in whom the scheduled land is for the time being vested;

“the scheduled land” means the land described in the schedule hereto which said land is shown and coloured red on a plan marked “Plan of the scheduled land” signed in triplicate by the Right Honourable the Earl of Drogheda P.C. K.C.M.G. the chairman of the committee of the House of Lords to whom the Bill for this Act was referred one copy of which has been deposited at the Office of the Clerk of the Parliaments

House of Lords one in the Private Bill Office of the House of Commons and one at the chapel ;

“ the Trustees ” means the present Trustees of the trust declared by the hereinbefore recited indenture dated the twenty-seventh day of October one thousand eight hundred and thirty-seven or other the trustees or trustee for the time being thereof.

“ enactment ” has the same meaning as in the Town and Country Planning Act 1947.

10 & 11 Geo. 6.  
c. 51.

3.—(1) The Trustees may sell the scheduled land or any part thereof or any easement right or privilege of any kind over or in relation thereto for such price or consideration in such manner and upon and subject to such terms as the Trustees may think fit. Power to sell scheduled land and application of proceeds.

(2) The Trustees after deducting the amount of any costs charges and expenses incurred by the Trustees under section 8 (Costs of Act) of this Act or in connection with any sale shall pay the net proceeds of any sale effected under the powers conferred by this section into the general purposes fund of the chapel.

4. As from the passing of this Act but subject to the provisions thereof the scheduled land shall be freed and discharged from all trusts uses obligations disabilities and restrictions whatsoever which immediately before the passing thereof attached thereto and from all rights and interests of any person who is an heir executor administrator or relative of any deceased person whose remains are interred in the scheduled land 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 scheduled land or any part thereof being a disused burial ground or forming the yard or enclosure of the chapel or otherwise : Discharge of trusts and restrictions affecting scheduled land and saving for private rights.

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

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 building or for any other purpose in like manner as if no part thereof had ever been used or set apart for the purpose of burial of human remains or had ever been or formed the yard or enclosure of the chapel. Power to use scheduled land for building or other purposes.

Removal of  
human remains  
from scheduled  
land.

6.—(1) Before using the scheduled land or causing the same to be used for any purpose other than as a burial ground the owner shall remove or cause to be removed therefrom the remains of all deceased persons interred therein.

(2) Before proceeding to remove any such remains the owner shall give notice of his intention so to do by publishing a notice once in each of two successive weeks in a newspaper circulating in the borough of Chesterfield with an interval between each publication of not less than six days and shall display a like notice in a conspicuous place upon or near to the principal door of the chapel and such notice shall have embodied in it the substance of subsections (3) (4) (5) (6) (7) and (8) of this section.

(3) At any time within two months after the first publication of such notice any person who is an heir executor administrator or relative of any deceased person whose remains are interred in the scheduled land or any part thereof 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 but subject as hereinafter mentioned to any conditions imposed by the minister to cause such remains to be removed to and reinterred in some other part of the burial ground of the chapel or in any other 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 parish.

(4) If any person giving such notice as aforesaid shall fail to satisfy the owner that he is such heir executor administrator or relative as he claims to be the question shall be determined on the application of either party in a summary manner by the Chesterfield County Court and such county 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.

(5) The expenses of such removal and reinterment (not exceeding in respect of remains removed from any one grave the sum of twenty-five pounds) shall be defrayed by the owner such sum to be apportioned if necessary equally according to the number of remains in the grave.

(6) 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 or (as the case may be) the person specified in any order made under subsection (4) of this section shall fail to comply with the provisions of this section and with any condition imposed by the minister the owner may remove the remains of the deceased person and cause them to be interred in some other part of the burial ground of the chapel or in such other burial ground or cemetery in which

burials may legally take place as the minister thinks suitable for the purpose but in the case of interment in a churchyard the previous consent of the incumbent of the parish shall also be required.

(7) Upon the removal of remains from the scheduled land a certificate of removal and reinterment shall be sent to the Registrar General by the owner giving the dates of removal and reinterment respectively and identifying the place from which the remains were removed and the place in which they were reinterred showing the particulars of each removal separately and every such certificate shall be deposited at the General Register Office with the miscellaneous records in the custody of the Registrar General.

(8) All monuments and tombstones 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 of such remains or at such place as the minister may direct on the application (if any) of such heir executor administrator or relative as aforesaid or failing such application on the application of the owner and the owner shall cause to be made a record of such monuments and tombstones and of their situation when re-erected showing the particulars respecting each monument and tombstone as a separate entry and such record shall be deposited at the General Register Office Somerset House London with the miscellaneous records in the custody of the Registrar General:

Provided that in the case of a monument or tombstone in respect of which no application is made by such heir executor administrator or relative as aforesaid it shall not be necessary to re-erect the monument or tombstone if the minister 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 minister may direct.

(9) The removal of the remains of any deceased person under this section shall be carried out under the supervision and to the satisfaction of the medical officer of health to the borough of Chesterfield.

7. 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 (Development Orders) and subsection (1) of section 118 (Application to land regulated by special enactments) of that Act. Saving for town and country planning.

8. All the costs charges and expenses preliminary to and of and incidental to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Trustees. Costs of Act.



## SCHEDULE

## DESCRIPTION OF THE LAND DEALT WITH BY THE FOREGOING ACT

A piece of land in the borough of Chesterfield lying to the east of Elder Way and forming the most southerly part of the burial ground of the Elder Yard Chapel and containing an area of two hundred and forty square yards or thereabouts and measuring on the east side thereof twenty feet or thereabouts and being bounded by property owned by South Staffordshire Farmers Limited and measuring on the south and west sides thereof one hundred and seven feet and twenty feet or thereabouts respectively and being bounded by property owned by Victoria Enterprises Limited and measuring on the north side thereof one hundred and eleven feet or thereabouts and being bounded by the remaining part of the said burial ground.

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PRINTED BY JOHN ROUGHTON SIMPSON, C.B.

Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

LONDON : PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

Price 9d. net

PRINTED IN GREAT BRITAIN

(37326