

THE CLIFTON AND DURDHAM DOWNS (BRISTOL) ACT 1861

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AN ACT

To enable the Corporation of the CITY of BRISTOL to purchase DURDHAM DOWN,
and to secure DURDHAM DOWN and CLIFTON DOWN as places for public recreation.

[ROYAL ASSENT, 17 MAY 1861]

Whereas there are in the immediate neighbourhood of the City of Bristol Two Downs or Commons contiguous to one another and undivided, one of which Downs is entirely within the City and County of Bristol, and contains about Two hundred and thirty Acres, and is called Clifton Down; and the other of the said Downs is partly within the same City and County and partly in the county of Gloucester, and contains about Two hundred and twelve Acres, and is called Durdham Down; and both the same Downs have from time immemorial been open and largely resorted to as Places of Recreation for the Inhabitants of Bristol and its Neighbourhood, and it is expedient that they should be so maintained: And whereas the Master, Wardens and Commonalty of the Society of Merchant Venturers of the City of Bristol (who are herein called the Society) are, or claim to be, Lords of the Manor of Clifton in the said City and County of Bristol, and to be entitled to the Fee Simple and Inheritance of the Common and Waste Lands within the said Manor, subject only to such commonable and other Rights, Roads, Ways, and Easements as belong to the Freeholders of the said Manor of Clifton and others, in, over, and upon the said Common and Waste Lands: And whereas the Society have agreed with the Mayor, Aldermen, and Burgesses of the City of Bristol, hereinafter called the Corporation, that when the Corporation shall have acquired Durdham Down, in pursuance of the Provisions of this Act, such Parts of the Common and Waste Lands of the said Manor of Clifton as are coloured Pink in the Plan hereafter referred to shall be Regulated and Governed by the Rules and Byelaws hereinafter provided for, and shall for ever thereafter be kept open and unenclosed as a Place of public Resort for the Citizens and Inhabitants of Bristol, subject, however, to the commonable and other Rights (if any) of the Freeholders of the said Manor and others, in, over, and upon the same Lands, and to the Provisions hereinafter contained, and the Society have further agreed that the Workings of the present and all future Quarries on the Parts of Clifton Down coloured Yellow on the said plan shall be subject to the Rules and Byelaws hereinafter provided for: And, whereas Sir John Henry Greville Smyth of Ashton Court in the county of Somerset, Baronet, (as to Three undivided Fourth parts) and Marianne Colston of Roundway Park in the county of Wilts, Widow, and the reverend Richard Symes, Clerk, and Charles Edward Murray Esquire, her trustees, (as to the remaining Fourth Part) are or claim to be Lords of the Manor and Hundred of Henbury, partly in the County of Gloucester and partly in the said City and County of Bristol, and to be entitled to dispose of the Fee Simple and Inheritance of the Common and Waste Lands (whereof Durdham Down forms part) within the said Manor and Hundred of Henbury, subject to such Commonable and other Rights, Roads, Ways, and Easements therein as belong to the Freeholders of the said Manor and Hundred and others, and by a Contract dated the Second Day of August One thousand eight hundred and sixty, and made between the said Sir John Henry Greville Smyth of the First Part, the said Richard Symes and Charles Edward Murray of the Second Part, the said Marianne Colston of the Third Part and the said Mayor, Aldermen and Burgesses of the Fourth Part, the said Sir John Henry Greville Smyth as to Three equal undivided Fourth parts, and the said Richard Symes and Charles Edward Murray, with the Consent of the said Marianne Colston (testified by her being a Party to and executing the Contract now in recital), as to the remaining equal undivided Fourth Part, agreed to sell, and the said Mayor, Aldermen, and Burgesses agreed to purchase, for the

sum of Fifteen Thousand Pounds, the Fee Simple of all that Part situate partly in the City and County of Bristol and County of Gloucester which was delineated in the Plan annexed to the Contract now in recital, and was therein coloured Green of the Waste or Common of the manor and Hundred of Henbury in the County of Gloucester, called Durdham Down, and of the Quarries and Roads and Ways shown on the same Plan as situate or lying within the Limits of the said Part so coloured Green on the said Plan of the said Common, and all the Estate and Interest (if any) of them the said Sir John Henry Greville Smyth, Richard Symes, and Charles Edward Murray of and in so much of the said Waste or Common as was coloured Blue in the said Plan, subject to all Rights of Common of every Kind over the said Common of the Freeholders of the said Manor and Hundred, and to all public and private Rights of Way over the said Roads and Ways respectively, and to all Rights and Interests (if any) whatever the same might be, subsisting upon, in, or over the said Part thereby agreed to be sold and purchased as aforesaid of the said Common; but the Title of the Vendors to the Black Rock Quarry or some Part thereof, or the adjacent Land, being disputed by a Person claiming by adverse Possession, the Limit or Boundary on the Side of the said Black Rock Quarry of the said Land thereby agreed to be sold and purchased was to be determined by and at the Risk and Expense of the Said Mayor, Alderman, and Burgesses, and no Abatement of Purchase Money or Compensation was to be made either in respect thereof or of any inaccuracy or Mistake in the said Plan in any other Part or Particular; and by the Contract now in recital it was (amongst other things) further provided, that the Purchasers should, at their own Expense, before the Twenty-fourth Day of December One Thousand Eight hundred and Sixty One, obtain or use their best Endeavour to obtain an Act of Parliament, in terms to be approved of by the Vendors, to enable them to purchase and hold the said Land thereby agreed to be sold and purchased, and to render it imperative on them forever to keep the whole of the said purchased Land uninclosed as a Place of Public Resort and Recreation, subject only to such Rules, Orders, Byelaws, Conditions, and Restrictions as might from Time to Time be deemed expedient and might be made by the said Mayor, Aldermen, and Burgesses for the Improvement and Preservation of the said Land, and for best ensuring the public Use and Enjoyment thereof:

And whereas Plans of the said Downs have been deposited with the Clerks of the Peace for Gloucestershire and for the city and county of Bristol respectively, on which Plans Clifton Down is coloured pink and yellow, and so much of Durdham Down as forms the Subject of the said Contract is coloured Green and Blue; and Books of Reference containing the names of the Lords of the said Manors and of the Commoners thereof, (so far as they can be ascertained), and of the Owners, Lessees, and Occupiers of Property in the said Downs as so coloured have been deposited with the said Plans:

And whereas such Part of Durdham Down as coloured Blue in the said Plan is also claimed by the Society as being part of the Manor of Clifton:

And whereas it is expedient that the aforesaid Agreement with the Society as respects Clifton Down should be carried into effect, and that the Corporation should be authorised to fulfil their contract for the purchase of Durdham Down, and should be enabled, with the consent of the Commoners or others interested therein, to purchase or to regulate the exercise of all commonable rights or other rights which may interfere with the enjoyment of either of the said Downs by the public; and that the Corporation and Society should participate in the management of both the said Downs; and that such part of Durdham Down as is now situated within the county of Gloucester should be henceforth deemed, for the purpose of police, to be within the city and county of Bristol, and should be subject to the jurisdiction of the Justices of the Peace for the same city and county:

But inasmuch as these objects cannot be attained without the authority of Parliament:

MAY IT 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:

I Such part of Clifton Down as is coloured pink in the said Plan, so deposited as aforesaid, together with such part of Durdham Down as is coloured blue in the said Plan, shall, so soon as Durdham Down shall be vested in the Corporation, be managed and regulated as hereinafter provided, and shall for ever hereafter remain open and unenclosed, and as a place for the public resort and recreation of the citizens and inhabitants of Bristol, subject however to the commonable and other rights (if any) of the freeholders of the said manor of Clifton and others in, over, or upon the said Down, and to the right of quarrying hereinafter reserved.

II It shall be lawful for the Corporation to fulfil the hereinbefore recited Contract of the second day of August, one thousand eight hundred and sixty; and upon the execution by all proper parties of a Deed of Conveyance duly stamped, and upon payment of the purchase-money of fifteen thousand pounds in the said Contract mentioned, and the fulfilment of the other conditions and considerations to be performed on the part of the Corporation, all the estate and interest of the said Lords in such part of Durdham Down as is coloured green on the said Plan, and of the quarries, roads, and ways shown in the same Plan, and of and in and to so much of the said Down as is coloured Blue on the said Plan, shall thenceforth vest in the Corporation in as full and ample a manner as such estate and interest have heretofore been vested in the Vendors; subject however to all rights of common of every kind over the said Down of the Freeholders of the Manor and Hundred of Henbury, and also to all public and private rights of way over the said roads and ways, and to all rights of persons (claiming under the said Vendors or by statute) to the quarries in the said Down, and to all other rights of common, way, and water, and other easements subsisting at the time of the said purchase: Provided always, That, subject to such rights as aforesaid, the whole of the said Down shall for ever hereafter be kept open and unenclosed by the Corporation during their estate and interest therein as a place of public resort and recreation, and be managed and regulated as hereinafter provided.

III It shall be lawful for the Corporation, with the consent of the Commoners or other parties who may be interested therein, to purchase all commonable rights and all other rights over or upon either of the said Downs which may, in the opinion of the Joint Committee hereinafter mentioned, interfere with the enjoyment of the said Down by the public; and from time to time, with such consent as aforesaid, to regulate the exercise of all such rights.

IV Nothing herein contained shall prevent, nor shall any Bye-Law or regulation hereafter made (unless by common consent of the Corporation and Society) prevent, the Society from continuing to work for the benefit of themselves and their successors, their lessees or tenants, the existing Quarries by the banks of the River Avon, or any other Quarries within the limits of the parts of Clifton Down coloured yellow on the Plan deposited as

aforesaid, from working for the benefit of themselves and their successors, their lessees or tenants, the Quarries by the side of the said River, shown on the said Plan as the 'Black Rock Quarry;' but the working of all such Quarries shall be subject to the reasonable Rules and Bye-Laws to be made in the manner hereinafter prescribed; and it shall not be lawful either for the Corporation or the Society, after the passing of this Act, to open or work any new Quarry upon the surface of Clifton Down, other than in the part coloured yellow in the said Plan, unless with the consent of the Joint-Committee hereinafter mentioned, and subject to the said Rules and Bye-Laws; and it shall not be lawful for the Corporation to open or work any new Quarry upon the surface of Durdham Down.

V It shall be lawful for the Corporation acting by the Council of the said city, after Durdham Down shall be so vested in the Corporation as aforesaid, and they are hereby authorised and required, to make such Rules and Bye-Laws as they shall think proper, and from time to time to alter or amend the same, for regulating, improving, and preserving Durdham Down and the portion of Clifton Down coloured pink in the said Plan, for enforcing such orders as the Joint Committee hereinafter mentioned may make in pursuance of this Act, and for directing in what manner the Quarries by the side of the River Avon, and such surface Quarries as are now open of the said Downs, or shall be hereafter opened on Clifton Down, shall be respectively worked (subject however as to such surface Quarries to the statutable rights of the Trustees of the Turnpike Roads, Local Board of Health, or the Surveyors of Highways, or other persons, to use of work the same); and all persons who shall come to or resort to the said Downs, or who shall be entitled to use any such Quarries as last-mentioned shall, and they are hereby required to observe and keep such Rules and Bye-Laws under such penalties and forfeitures as shall be respectively fixed for the breaking or non-performance of the same: Provided, nevertheless, That no such Rule or Bye-Law shall be made, altered, or amended, or shall have any force or effect, until the same shall have been approved by the Society, and their approval thereof signified by writing under their corporate seal, to be affixed to the said Rules and Bye-Laws: And provided also, That the 90th Section of the 'Act to provide for the regulation of Municipal Corporations in England and Wales' shall apply to such Rules or Bye-Laws.

VI In all cases of prosecution against any person who shall violate any Rule or Bye-Law as aforesaid, the production of a written or printed paper, or parchment, purporting to be a true copy of the said Rules or Bye-Laws, and authenticated by having the seal of the Corporation affixed thereto, shall be evidence of the existence and of the due making of such Rules and Bye-Laws.

VII It shall be lawful for any constable of the said city and county, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against any Rule or Bye-Law to be made under this Act, and whose name and place of residence shall be unknown to such constable, and to convey such offender with all convenient despatch before two Justices of the Peace for the said city and county without any warrant or authority other than this Act, and such Justices shall proceed with all convenient despatch to the hearing and determining of the complaint against the offender.

VIII All penalties and forfeitures which shall have been incurred by any person for any offence committed against any such rule or Bye-Law, shall be recovered before two Justices of the Peace for the said city and county of Bristol in manner directed by an Act passed in the Session of the eleventh and twelfth years of the reign of Her Present Majesty, chapter forty-three, entitled, 'An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to summary Convictions and Orders' or of any Act or Acts which may be hereafter passed to amend or alter the same.

IX No person shall be disqualified from acting as a Justice of the Peace in any matter relating to the execution of this Act, or to any such Rule or Bye-Law, by reason of paying, or being charged with, or being liable to pay any Municipal or Borough rate within the said city and county, or by being a member of the Council of the said city or holding office under them.

X It shall be lawful for the Corporation and the Society, as soon as conveniently may be, after Durdham Down shall be so vested in the Corporation, and they are hereby required, to nominate a Joint Committee for the management of both the said Downs, which Committee shall be called 'The Downs Committee', and shall consist of the Mayor and six Members of the Council of the said city to be elected by the said Council, and of the Master and six Members of the Society to be elected by the said Society, and five shall be a quorum of the Committee; and such Committee shall continue in office until the ninth day of November next ensuing the date of its appointment, and also in the then next ensuing and every succeeding year, or as soon as conveniently may be after those respective days, shall and they are hereby required to nominate and choose another Joint Committee to be constituted as aforesaid in the place and stead of the Committee which shall have then previously gone out of office; and the members of every such Committee shall remain in office for one year from the time of their appointment, and two of the members nominated by the Corporation and two of the members nominated by the Society shall not be capable of re-election; and all questions before the same Committee shall be determined by a majority of the votes of the members present thereat; and the Mayor of the said city shall when present be Chairman of the Committee, or in his absence the Master of the Society shall be Chairman, and in the absence of both these persons the members of the Committee present shall choose a Chairman; and the first meeting of the Committee shall be held on such day within one month after their first appointment, and at such place as the said Mayor and Master shall appoint.

XI It shall be lawful for the Downs Committee from time to time to exercise the following powers with respect to the said Downs, and make all necessary orders for carrying the same into effect:

They may from time to time suggest, for the approval of the Corporation and Society respectively, such Rules and Bye-laws as they may deem expedient for carrying this Act into execution; and they shall carry into effect such Rules and Bye-laws as shall be made:

They may open new roads in or over the said Downs, and from time to time may close the same, and they may close or divert any of the existing roads or ways, subject, however, as to any such last-mentioned roads or ways to any rights of way which may exist therein:

They may prevent all obstructions and nuisances, and from time to time remove any encroachments on the said Downs; they may erect thereon temporary fences for improving and preserving the turf and preventing injury thereto by carriages or horses, and may from time to time direct what parts of the said Downs shall or shall not be used by carriages and horses:

They may drain, plant or improve the said Downs, may inclose parts thereof for ornamental purposes only, and may appropriate portions thereof for particular purposes of recreation or exercise:

They may agree with the Trustees of any turnpike-roads, or the Surveyors of any public highway, or with any Local Board of Health, or other person having the custody and control of such highway, with respect to the exercise by such persons or Board respectively of such rights as they may respectively possess of quarrying in the said Downs; and they may fix the spot whereon and the manner in which any such Trustees, Surveyors, Local Board of Health, or other persons as aforesaid, shall exercise the right of quarrying in the said Downs: Provided always, That whensoever any difference shall arise between the Downs Committee and such Trustees, Surveyors, Local Board, or other persons, as to the fitness of the spot or the restrictions proposed in the manner of quarrying, such difference shall be settled by the arbitration of some person, to be appointed by the Recorder for the time being of the City of Bristol, and the decision of such person shall be final:

They shall be empowered to close and fill up any of the existing surface quarries on either of the said Downs, and on Clifton Down again to open the same, or any fresh surface quarries (subject, however, as to any existing quarry, to any statutable right to use the same which may be possessed by any such Trustees, Local Board, Surveyors, or other persons as aforesaid):

They may make rules for the conduct of their own business and may appoint and remove clerks and servants, and also officers and workmen for the purposes of this Act, and they may fix the remuneration of the persons so to be employed by them:

They shall, at two convenient times in every year, to be fixed by the said Council, make an estimate of the expense to be incurred in carrying this Act into execution during the period mentioned in the said estimate, not exceeding in any one year the sum of three hundred pounds; and they shall by requisition under the hands of the said Mayor and Master, addressed to the Treasurer of the said City, demand the payment of the sums mentioned in the requisition, and at the times therein mentioned; and the said treasurer, within three months from the date of such requisition, and at the times therein mentioned; and the said Treasurer, within three months from the date of such requisition, out of any moneys which may then be in his hands on account of the Borough Fund of the said City, shall pay the said sums to such persons and at such times as shall be appointed by the said requisition:

They shall cause entries or minutes, as the case may be, of all their orders or proceedings to be entered in a book or books, to be kept by them for such purpose, which book or books shall be open at all reasonable times for the inspection of any Member of the Council or Society respectively, without payment of any fee; and such entries or minutes shall be signed by the Chairman of the Meeting at which such orders and proceedings were made; and such entries or minutes, when so signed, shall be received as prima facie evidence of all such orders and proceedings in all Courts and places, and before all Judges, Justices, and others whomsoever:

They shall report their proceedings yearly to the Council and Society respectively.

XII Excepting as is by this Act expressly provided, nothing in this Act contained shall alter or impair the estate, right, title, powers, or privileges of the Society or their Trustees in or over the Manor of Clifton, or in or over Clifton Down, as part of the common and waste lands of the same Manor; but all such estate, right, title, powers, and privileges shall (except as aforesaid) remain as valid and effectual as though this Act had not passed; not shall anything herein contained affect or prejudice any contract or agreement heretofore entered into by the Society or their Trustees with any other persons for the use or occupation of any part of Clifton Down, or for any right or easement in or over the same.

XIII So soon as Durdham Down shall be vested as aforesaid in the Corporation, that part of the said Down which is now situated within the county of Gloucester shall, for all purposes of police, be deemed to be part of the City and County of Bristol, and the Justices of the Peace and constables for the same city and county shall have the same authority and jurisdiction in and over the said part of the said Down as they may now lawfully exercise within the other parts of the said city and county.

XIV Within two months after the passing of the Act there shall be deposited with the Town Clerk of the City of Bristol, in the Council House of the same city, a copy of the Plan so deposited as aforesaid, which Plan shall be authenticated by the corporate seal of the Corporation and by the common seal of the Society; and another copy of the same Plan, authenticated in like manner, shall be deposited with the Treasurer of the Society at the Hall of the same Society; and the said Plans shall be preserved among the deeds and muniments of the Corporation and Society respectively; and the Plan deposited in the Council House, or a copy thereof so authenticated, shall be open at all reasonable times for the inspection of any person concerned therein on payment of the fee of one shilling; and the copy so deposited in the Hall of the Society shall be open at all reasonable times for the inspection of any member of the Society without payment.

XV The expense of obtaining this Act, of the purchase of Durdham Down and of any commonable or other rights as aforesaid and of laying out the said Downs for the Public, of forming, diverting, or closing roads, and of protecting, closing or filling up surface quarries, shall be defrayed from time to time by the Corporation out of the Borough Fund of the said city and county in manner hereinafter provided for that purpose.

XVI It shall be lawful for the Corporation acting by the said Council, from time to time to borrow and take up mortgage of the Borough Rates or Fund, or other property of the said city, all or any part of the money which shall be required for defraying such expense as aforesaid, not exceeding in the whole the sum of twenty thousand pounds; and such money may be so raised at any rate of interest not exceeding five pounds per centum per annum, and every such mortgage may be made by an instrument in the form contained in the Schedule hereunto annexed, or to that or the like effect, and shall be executed by affixing thereto the corporate seal of the said city and county, and every such mortgage shall be effectual for securing to the person advancing the sum of money in such mortgage expressed to be advanced, his executors, administrators, or assigns, the repayment thereof with interest for the same after such rate and at such time and in such manner as shall be provided in such mortgage; and the said mortgages shall be numbered in the order of succession in which they are granted, and copies or extracts of all such mortgages shall be kept by the Treasurer of the said city in a book to be provided for that purpose; and the persons to whom such mortgages or any transfers thereof shall be made, their executors and administrators, shall be creditors upon the Borough Rates or Fund, or other property of the said city thereby

expressed to be mortgaged in an equal degree one with another, and shall not have any preference or priority other than is provided under the powers of this Act.

XVII The said Council shall in every year charge the Borough Rates or Fund of the said city with the sum for the time being required to pay the interest of any money borrowed on any mortgages under this Act, or such of them as for the time being shall remain unpaid; and also, with the payment of a further sum not less than one-thirtieth part of the whole of such mortgages at the time of the same being first made; and such sum shall be applied, under the direction of the said Council, in discharge of the interest of the said mortgages or such of them as for the time being shall remain unpaid, and of so many of the principle sums owing on the said mortgages for the time being remaining unpaid, as such sums after the payment of the interest as aforesaid will extend to discharge, until the whole of the principal moneys for which such mortgages shall have been made and the interest thereof shall be fully paid and discharged; and the said council is hereby required to fix one or more days in each year on which such payments shall be made, and shall make orders for assessment in due time so as to provide for such payments being regularly made; and the said Council shall by agreement with the said parties or others advancing any money for the purposes of this Act determine the order, or priority, or the time in which the several sums advanced shall be respectively discharged; and the Treasurer of the said city shall keep an exact and regular account of all receipts and payments in respect of all principal moneys borrowed or taken up as aforesaid under this Act, and the interest thereof, in a book or books to be kept for that purpose; and the said book or books duly adjusted and settled up to the time being, shall deliver annually to the said Council at such time as they shall appoint; and such Council is hereby required carefully to inspect all such accounts, and to make such orders for carrying the several purposes aforesaid into execution as shall be deemed meet and necessary.

XVIII Provided always, That the said Council shall make provision by the ways and means aforesaid, and by the orders and directions which they are hereby authorised to give, that the whole of the principal money to be borrowed under the authority of this Act, and all interest for the same shall be fully paid and discharged within a time to be limited by such Council, not exceeding thirty years from the time of borrowing the same.

XIX No person lending money to the said Council, and taking a Mortgage for securing repayment of the same, executed in manner directed by this Act, and purporting to be made under the authority of this Act, shall be bound to require proof that the several provisions of this Act have been duly complied with; and if the said Council shall have executed a Mortgage under this Act, then such Council shall be deemed to have had full powers to levy the rates so mortgaged as aforesaid for repayment of the money so borrowed with interest, notwithstanding any of the provisions of this Act may not have been complied with; and it shall not be competent for any ratepayer or other person to question the validity of any such rates or mortgage on the ground that such provisions had not been complied with.

XX Provided also, That in every case in which any moneys shall have been borrowed under the powers of this Act, it shall be lawful for the said Council to pay off the moneys so borrowed, and to raise and borrow the moneys necessary for that purpose, and also to repay the said last-mentioned moneys and the interest thereof under the powers of this Act, as if such moneys were borrowed under the powers firstly hereinbefore contained; but so, nevertheless, that all moneys borrowed shall be discharged within thirty years from the time of first borrowing the same.

XXI This Act may be cited as 'The Clifton and Durdham Downs (Bristol) Act, 1861.'