

A. Executive Summary in Outline

In November 2019, I was asked to help the residents in Steep, Hampshire (where I live¹) in trying to fathom as to how the Church Road allotments in Steep (which were protected from development by being outside the Settlement Boundary) became at risk of development when, without their knowledge, the Settlement Boundary was changed. That change meant that the allotments became subject to the presumption that they would be developed.

Our investigations have revealed that:

- The Church Road Site has been Allotments since April 1819 but had been the subject of an Inclosure Commissioners' Award dated September 1866 under the Inclosure Act 1845.
- A new scheme made in 2015 by the Charity Commission was predicated on the notion that there were 'no poor' or 'labouring poor' in Steep' and the 'original' charitable objects could not be met.
- A copy of the letter dated 14 April 2010 contained the Commission's conclusion that the 18 applicants did not qualify for an allotment because none were 'poor' or of the class 'labouring poor': the Commission has refused to provide us with a copy when requested.
- Actually there has been no requirement for means-testing for the purposes of obtaining an allotment since the Land Settlement (Facilities) Act 1919 which amended the Small Holdings and Allotments Act 1908 and in any event, section 26 of the Commons Act 1876 was also ignored by the Commission).
- There has been great difficulty obtaining the documents held by the trustees to which beneficiaries of the trust are entitled.
- Steep Parish Council is adamant in its desire for development of the land.
- Apart from the Referendum of May 2010 (in which the residents of Steep voted against the Steep Parish Council's then proposals for disposing of the allotments for development) the Council did not undertake consultations which complied with the Gunning Principles.
- Behaviour of Steep Parish Council which amounted to breaches of trust include:
 - Referendum of the people of Steep rejecting development has been ignored.
 - Misstatements whether negligent or otherwise in the Council's application to the Commission under the Commons Act 1899;
 - Failing to comply with Steep Parish Council's duty of full and frank disclosure;
 - Failing to take the measures in relation to the Steep Allotments as set out in the document headed "Steep Parish Council failures 3";
 - Placing itself in and acting in conflict of interest;
 - Failing to put the interest of each trust over and above the interest of Steep Parish Council as an organ of local government so that the latter was paramount – such being in breach of trust;
 - Failing to inform the residents and beneficiaries of Steep timeously of the contents of the confidential meeting between Steep Parish Council and the SDNPA of the 14 November 2016 and the contents of their letter dated 19 December 2016;
 - Failing to explain to the residents and beneficiaries the significance of proposals arising from that November 2016 meeting and the letter dated 19 December 2016, including the proposal that the Settlement Boundary be moved so as to include the Church Road allotments and allow the presumption of development there;

¹ I moved to Steep 8 years ago.

- Failing to conduct a consultation in compliance with the Gunning Principles in respect of the SDNPA proposals and of the intention of Steep Parish Council to agree to such proposals.
- Failing to inform the residents and beneficiaries of the contents of the meeting between Steep Parish Council and the SDNPA on the 14 November 2016 and Steep Parish Council's agreement to proposals arising out of that meeting set out in the letter to the SDNPA dated 19 December 2016 until, so far as it has been possible to ascertain, about 11 months later;
- Failure to appoint independent trustees of the SVWMC but rather appointed persons who were also Parish Councillors as set out in the document headed "Complaint to Commission of 8 June";
- Failing to comply with its legal duty to "provide allotments if requested" in breach of section 23 of the Small Holdings and Allotments Act 1908 as amended by the Land Settlement (Facilities) Act 1919.

These acts done by Steep Parish Council were done as trustee and amount to unconscionable conduct.

It is a fundamental principle of our law that no man can take advantage of his own wrong.² Furthermore, a Court of Equity will intervene and impose itself whenever the circumstances are such that it would be unconscionable³ for the owner of the legal title [Steep in Need] to assert his own beneficial interest and deny the beneficial interest of another [the beneficiaries and residents of the Parish of Steep]". The legal estate of the Steep allotments were transferred to Steep in Need for no consideration: Steep in Need is a volunteer.

A Court of Equity is flexible as to what should be ordered by way of remedy: in the instant matter, it is submitted that the remedy⁴ is to make a new scheme restoring the holding of the land at Church Road as it was in April 2010 with new independent trustees chosen from those persons who are willing to protect the original purpose of holding the designated land for allotments.

B. The Statutory Framework

1845. The Steep allotments were the subject of an Inclosure Commissioners' Award dated the 6 and 13 September 1866 by virtue of the provisions of the Inclosure Act 1845 ("the original Scheme");

"A series of amending⁵ Acts was passed to supply omissions and deficiencies which practice discovered in the original Act down to the year 1876⁶;

1876. Under section 26 of the Commons Act 1876: "Unlet Allotments. An allotment which cannot be let for allotments may be let to **any person whatever** at the best annual rent which can be obtained, without premium, and on such terms as may enable the council to resume possession

² For example, *Alghussein Establishment v Eton College* [1988] 1 WLR 587.

³ *Lonrho v Fayed* [1992] 1 WLR 1 at 10 in which Millett J explains *Homeward Bound Gold Mining Co. v. McPherson* (1896) 17 N.S.W.L.R. 281 at 319.

⁴ This approach is in accord with the Charity Commission Caseworkers Bible at B.3.

⁵ Amending the Inclosure Act 1845.

⁶ The Commons Act 1876.

within a period not exceeding 12 months if it should at any time be required for letting for allotments” (“**the Second Scheme**”);

1919. The Land Settlement (Facilities) Act 1919 removed references to the labouring poor (in the Small Holdings and Allotments Act 1908) and required councils to provide allotments where there was a sufficient local demand regardless of the circumstances of the would-be allotment holders – per Patten LJ in *Snelling v Burstow*⁷ which was followed by the Commission in its decision of 20 December 2016 “Decision of the Charity Commission for England and Wales Hughenden Community Support Trust⁸ – Application for removal from the register of charities” (“**the Third Scheme**”).

2010. In a letter dated 14 April 2010, the Commission informed a resident of Steep that none of the 18 applicants for allotments at the Church Road allotments were able to take allotments since each was not “labouring poor”. This conclusion was an error of law.

2013. The starting point for the creation of a new Scheme to look, not at the original Scheme, but at the Third Scheme: otherwise, the Commons Act 1876 and the 1908 Act as amended by the 1919 Act are ignored: *Snelling v Burstow* and the above mentioned “Decision of the Charity Commission” of 20 December 2016 show that the Acts of 1876, 1908 and 1919 are not to be ignored.

In every case where a Council wishes to dispose of an allotment (such as the Steep allotments), the consent of the Secretary of State is required under section 8 of the Allotments Act 1925. In those cases where the legal title of the allotments is held by trustees, the additional consent is required by the Charity Commission or the High Court.

⁷ [2013] EWCA Civ 1411.

⁸ Dated 20 December 2016.

C. Executive Outline in Further Detail

1. In November 2019, I was asked to help the residents in Steep, Hampshire (where I live⁹) in trying to fathom as to how the Church Road allotments in Steep (which were protected from development by being outside the Settlement Boundary) became at risk of development when, without their knowledge, the Settlement Boundary was changed. That change meant that the allotments became subject to the presumption that they would be developed.
2. This change was all the more perplexing since the only event between the two positions mentioned below was a Referendum in May 2010 by which the people of Steep voted against the disposal of the Church Road allotments and the development then proposed. The Petersfield Post reported the meeting at which the Referendum result was conveyed to the residents. Its headline was *"Allotments preferred to housing in Steep"*. The immediate past Chairman was reported in that paper to have said *"They [residents] wanted allotments ...It was a very, very good turnout and most of the Parish had their say"*.
3. We have since discovered that these allotments were created by virtue of the powers which Parliament granted Vestries (under 59 Geo III, c.12 – now known as the Poor Relief Act 1819): the Steep allotments were created by a resolution of Steep Vestry on the 22 April 1819 (some few weeks after that Act came into operation – Royal Assent being granted on 31 March 1819). They are the Oldest Statutory Allotments in the Country and in this regard I attach an email from Dr Burchardt from Reading University who is the foremost authority on the Allotment Movement of the 18th and 19th century.

4. The position was thus:

From A to B

In, say 1998, the state of affairs (A) was:

- a. The Allotments existed as they had since 1866 (without allotments, the object of the trust of 1866 could not be carried out);
 - b. They were protected by the fact that they were trust assets (Steep Parish Council only held them; they did not own them);
 - c. The beneficiaries of the trust, the inhabitants of the Parish of Steep, were protected from anyone who might want to develop the land;
 - d. There was no power to sell any of the trust assets under the 1866 trust;
 - e. They were outside the Settlement Boundary and were therefore protected from development by virtue of provisions of planning law; and
 - f. There was no presumption of development.
5. Part of the Charity Commission's letter dated the 14 April 2010 to a resident of Steep was read out by the recipient at the public meeting held on the 1 February 2020 - the words read out were:

“ “I conclude that 18 applicants for allotments submitted to Central Steep Residents Group were not labouring poor or otherwise in the [inaudible 00:34:56] circumstances.” Now that was what was going on then, we had 18 people who wanted to have an allotment there. They weren't

⁹ I moved to Steep 8 years ago.

labouring poor, let's just face it. It went on to say, the Charity Commission [s.l¹⁰ . arguing 00:35:15] for a change in projects of, on the grounds that there were no poor in Steep”.

6. The Commission has refused requests for a copy of this letter dated 14 April 2010. (A letter dated 14 July 2010 from the Commission (Mr Julian Critchlow) mentioned in the minutes of the trustee of the allotments, Steep Parish Council, of 2 September 2010 may also throw some light on the conclusion contained in the letter of the 14 April 2010.)

This amounted to a decision that in order for a person resident in the Parish of Steep, such person had to show that he or she was poor. This was contrary to section 26 of the Commons Act 1876 and section 23 of the Small Holdings and Allotments Act 1908 as amended by the Land Settlement (Facilities) Act 1919; it was also contrary to the Charity Commission's own decision called: Decision of the Charity Commission for England and Wales Hughenden Community Support Trust¹¹ and the prior decision of the Court of Appeal of *Snelling v Burstow*¹² in which Patten LJ said:

“ The Land Settlement (Facilities) Act 1919 removed references to the labouring poor and required councils to provide allotments where there was a sufficient local demand regardless of the circumstances of the would-be allotment holders” [emphasis added].

7. Another Parish Council, namely Colden Common, has expressed this position (on their website)¹³ as regards their allotments: “The allotments are protected in perpetuity as a registered charity, the Parish Council is sole trustee”. That was how it appeared to be in the case of Steep in early 2010.
8. In May 2010, the Parish Council held a Referendum scrutinised and supervised by Electoral Reform Services Ltd: the result of the ballot was a decision “No to development then proposed” and the Allotments continued in existence. The Petersfield Post headline following the meeting at which the result of the Referendum was disclosed was: “Allotments preferred to housing in Steep”.
9. In 2021, we find ourselves in this position (B):
 - a. The Allotments are at severe risk of being eliminated by sale but are still held as a trust asset but as the Steep in Need trustees letter expressly pointed out “There is an express power of sale in relation to the land ... The trustee have an absolute power of sale ...”.
 - b. The Settlement Boundary was changed to include the Allotments without the inhabitants of Steep being told, asked or consulted; so
 - c. There is now a presumption of development;
 - d. The Allotments were not registered as a Local Green Space without the inhabitants being told, asked or consulted;

¹⁰ Stenographer's note for “sounds like”.

¹¹ Dated 20 December 2016.

¹² [2013] EWCA Civ 1411.

¹³ <https://www.coldencommon-pc.gov.uk/Allotments.aspx> .

- e. The Local Plan was changed so that the Steep parish Council's adamant desire to develop the land could be carried out.

The efforts of trying to obtain documents

10. The starting point of trying to find out how this change had occurred was, of course, to obtain documents. Requests made to the Steep Parish Council for documents upon the basis set out in *O'Rourke v Darbyshire*¹⁴ as explained by the Supreme Court in *Schmidt v Rosewood Trust Ltd*¹⁵ were met with a statement to the effect that such requests would be answered on the footing that they were made under the Freedom of Information Act 2000: so such documents which were disclosed under the FOIA were redacted¹⁶ and omitted categories of documents which, it is submitted, would fall to be disclosed in full answer to a request made by a beneficiary of the trustee especially in the light of the factual material set out in the Statement of Case and in the light of the decisions such as *Williams v Quebrada Railway, Land & Copper Co*¹⁷, *O'Rourke v Darbyshire* itself and the decision of a strong Court of Appeal in *Gamlan v Rochem*¹⁸ which approved the decision in *Williams v Quebrada Railway*.

Requests for documents made of Steep in Need on the jurisdictional basis of *Schmidt v Rosewood Trust Ltd* were refused.

The effort required to obtain documents is set out in the document headed: "Chronology of the effort to obtain documents and information relating to the allotments" which has been provided to the Tribunal.

11. The material set out in the Statement of Case is the result of piecing together the information which came from such documents and from other sources including from the Hampshire Record Office where relevant minutes of meetings of Steep Vestry and Steep Parish Council were, and are, publicly available. This necessarily meant that, as set out in my solicitor's letter to the Commission dated 7 October 2020, that:

"Our client has, compared to the Parish Council, very limited access to documents and information, most of which is in the custody, possession or control of the Parish Council. Accordingly, for reasons of not having all the relevant documents and information, our client's research and conclusions must necessarily be regarded as inconclusive and should not be relied upon by others; it will be for others to make their own investigations into the matters of title and the other matters which are set out in this letter and enclosures". This still applies not least because full and complete disclosure by the trustee, Steep Parish Council, has not taken place.

12. Documents show that Steep Parish Council has been adamant (to use the Council's own words) since about 2002 to sell the allotments to a developer for houses. This has fostered a corrosive and divisive atmosphere in the Village which ultimately led to the Council to decide to give the decision to the residents of Steep by way of a referendum as to what should happen to the Church Road allotments. Documents show that within about three months, Steep Parish Council

¹⁴ [1920] AC 581.

¹⁵ [2003] UKPC 26.

¹⁶ Redaction of names (and, in the case of documents emanating from the Charity Commission, redaction of dates) necessarily leads to an inability to place documents in the right order and to identify the knowledge held by each person, thereby hampering the process of trying to find out what actually happened.

¹⁷ [1895] 2 Ch 751.

¹⁸ (7 December 1979) unreported.

started to circumvent that result without the residents knowing. I deduce that the Steep Parish Council had decided that the view of the People should be avoided in the future.

13. The most crucial event in the matter was the proposal to change the Settlement Boundary so that Boundary would include the Church Road Allotments: this was discussed at a confidential meeting which took place on the 14 November 2016 between Steep Parish Council (an elected body) and the South Downs National Park Authority (an unelected body) (the SDNPA). The SDNPA and the elected Council have both admitted that this meeting was “confidential” – meaning that the contents of the meeting were to be kept from the residents, beneficiaries and electors of the Parish of Steep. By a letter dated 19 December 2016, Steep Parish Council agreed to the “**confidential draft proposals**” (to use the Council’s own words in the letter).
14. The contents of the meeting of the 14 November 2016 and of the letter dated 19 December 2016 were kept from the residents, beneficiaries and electors of the Parish for a time: without the benefit of the disclosure of documents, that time, it appears, lasted 11 months. Such information as the Steep Parish Council was prepared to impart to the residents is contained in the minutes of the meetings which are set out in the Statement of Case. The significant changes proposed were set out in a notice which largely followed the Steep Parish Council letter of the 19 December 2016 and that notice was placed on the Council website on the on or about the 23 November 2017, two days after the deadline for SDNPA Local Plan consultation had passed: it was called “STEEP PARISH COUNCIL RESPONSE TO SDNPA LOCAL PLAN PROPOSALS”
15. That left, in practice, only a few days (or less in the case of reliance upon the notice on the website headed “STEEP PARISH COUNCIL RESPONSE TO SDNPA LOCAL PLAN PROPOSALS”) for the residents to be properly informed of the significant change in the moving of the Settlement Boundary and of the consequences in law and in fact of such a change – including the extinction of the right under section 23 of the 1908 Act as amended of a person resident in the Parish of Steep to be granted, upon request, a lease of a vacant plot by the Steep Parish Council – and for objections to be made to this extinction of a contingent right to an interest in land under Section 23.
16. The result was that the residents of Steep were not given any proper opportunity to make representations as to whether the Parish Council should offer the allotments (as we now know they did) to the SDNPA for land for development and hence agree together with the SDNPA that the Settlement Boundary should be moved to include the allotments in Church Road, Steep. By virtue of this change, as I have said, the Oldest Statutory Allotments in the Country became the subject to a presumption that it should be developed and built upon.
17. The residents did not know of the intention of the Parish Council in this regard. It was no doubt the last thing on everyone’s mind having regard to a brutal campaign leading to the referendum which everyone thought would put an end to the unpleasantness: that issue had, it seemed, been laid to rest. Under section 8 of the Allotments Act 1925, the Secretary of State must, in every case, give his consent if a Council wishes to dispose of a statutory allotment; and in that regard, a consultation of those affected should take place before such consent is granted. No such consent has been sought by Steep Parish Council.

18. There was also no consultation as regards to the changing of the Settlement Boundary. In fact, apart from the requirement of a consultation in 2016, at least one other consultation should have taken place in 2015 on a proposal to change the Charitable Scheme which governed the allotments. Each of these consultations should have complied (but did not) with the Gunning Principles:

“It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken (*R v Brent LBC ex parte Gunning* [1986] 84 LGR 168)” approved by the Supreme Court in *R v London Borough of Haringey* [2014] UKSC 56.

19. The first many of the residents knew that the result of the Referendum was to be ignored was at an explosive meeting at the Cricketers Pub in Steep which concerned residents arranged on 1 February 2020.
20. The documents show that Steep Parish Council has acknowledged that under the allotments Acts the “the Council is under a legal duty to provide allotments if requested” and the practice of the Council from at least 1919 as shown in the Minutes reflect this. From 1908 at the latest, the Council was under a duty to manage and maintain the allotments.
21. There are 11 allotments on the Church Road site of about 1.4 acres. In April 2010, the Charity Commission was informed by local residents, as was the fact, that there was a waiting list of 23 residents who, under the 1908 Act as amended, were entitled to an allotment: there is no lawful reason for such request to be refused.
22. The Parliamentary Select Committee produced a comprehensive report of June 1998 on allotments in the course of which they said that it is better to split the plots into two and to provide a play area. The Steep Allotment Society produced a comprehensive plan in 2010 (as is encouraged by the Government and by numerous bodies including the Local Government Association) which was presented to the trustee, Steep Parish Council, and the Charity Commission: this plan was rejected by the Council; rejected – because they wanted to sell to a developer. This presentation is contained in the document headed “Steep Allotment Society presentation” which has been sent to the Tribunal. In the Council’s application to the Charity Commission, the formation of the Steep Allotment Society in an effort by the residents to have allotments was cynically and erroneously described by the Council thus:
- An “allotment society was formed and approximately 30 people expressed an interest in an allotment on this site, SPC [Steep Parish Council] considered however that this supposed interest was merely a spoiling operation to the proposal for affordable housing”: in this context, it is worth bearing in mind the Council’s legal duty to let vacant allotment plots to any resident who makes a request.
23. But for the refusal of the Council to grant leases for the plots at the Church Road allotments and the Council’s failure to manage those allotments, the original Scheme would still be working and that there was a waiting list of residents for allotments numbering 23 (with only 11 allotment plots all of which were vacant).

24. The correspondence with Mr Hughes-Jones of the Charity Commission in April 2010 (before the referendum) shows that the Charity Commission accepted that there was local demand for allotments and that there was great opposition to development of the allotment site: two factors that are fatal to an application for a change of scheme under Cy-Pres and both of which the Commission later (in 2013) completely ignored without telling the residents. If the Commission had told the residents at the time of the grounds put forward by the Steep Parish Council in its application, the residents would have been able to make submissions to show the true facts. Those would also have been able to be put in a consultation which was required under both the Government guidelines which regulate the disposal of allotments by Councils and, as it happens, under the requirements of the Charity Commission laid out following the Council's application.

In that event, the true facts would have been revealed upon which a proper consideration of the applicable law would have taken place.

25. The fact that the Council has been and is "adamant" that the site be sold to developers offends the first Gunning Principle – a "consultation must be undertaken at a time when proposals are still at a formative stage". The documents reveal that many residents (each of whom had and has the right to an allotment under the Allotment Acts) requested the Council for a plot. In every case, the Council refused to grant an allotment in breach of their legal duty: **NOT A SINGLE ONE** was granted. From about 1998, the gate was and remains padlocked with only the Council having a key. The Padlocked gate is a powerful image. I for one had no idea that the village had allotments when we first came here in 2013. Even recently, my neighbour remarked that she did not know the village had allotments – such is the Council's success in making the allotments disappear from the residents consciousness: a state of affairs which is the result of Steep Parish Council assiduously following a policy of managing the allotments in accordance with the Government guidelines as set out in the attached "Steep Parish Council failures 3".

26. In the Government guidelines published in February 2002 states:

"Ministers have been concerned that it is possible that demand may not exist because local people are unaware that allotments are available. In some cases it has even been suggested that the authority has actively created the impression that allotments are not available because the land is to be disposed of". Steep Parish Council's conduct is, if anything, worse than that.

There is real concern within the Government (as shown by the 1998 report of the Parliamentary Committee) at the conduct of Councils generally in relation to allotments. Steep Parish Council is, on the facts here revealed, worse than others: see the Select Committee report of June 1998 here: <https://publications.parliament.uk/pa/cm199798/cmselect/cmenvtra/560/56002.htm> which I used as a base for the attachment showing the Council failures.

The Government insists that Council MUST properly assess LATENT demand for allotments see https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/662348/Allotment_disposal_guidance_-_Safeguards_and_alternatives.pdf.

The government has set out strict guidelines which Councils should follow. In the Government's "Allotment disposal guidance: Safeguards and alternatives" the first paragraph states: "Allotments are valuable community spaces that provide people with the opportunity to enjoy regular physical exercise; meet new people in their neighbourhood; and benefit from a healthier diet, regardless of income".

27. It cannot be stressed enough that the benefit of allotments in mental health is enormous: this has been known for over a hundred years. There is nothing in the documents which I have seen which indicates that the Steep Parish Council have given **any** consideration to such benefits. Just as those who suffered shell shock from the Trenches, so their grandchildren can benefit in times of stress, such as today, with Lockdown.

28. As I have already mentioned, by virtue of the Allotments Act, in the case of existing allotments, the residents of the Parish have a right to be granted a lease in respect of a plot if they request one. That has been taken away by the Charity Commission without any hearing, without being given the evidence upon which the Council were relying, with the decision being made by an unknown person in secret: all in breach of natural justice and in breach of the Human Rights Act.

- a. The Steep Parish Council was trustee at all material times of the Steep Village War Memorial Club (SVWMC) and of the allotments at all material times until the Council resigned as corporate trustee: the grounds of relief and causes of action include:
- b. Misstatements whether negligent or otherwise in the Council's application under the Commons Act 1899; Failing to comply with Steep Parish Council's duty of full and frank disclosure as arose under the four bases set out in the Statement of Case;
- c. Failing to take the measures in relation to the Steep Allotments as set out in the document headed "Steep Parish Council failures 3";
- d. Placing itself in and acting in conflict of interest which in breach of trust;
- e. Failing to put the interest of each trust over and above the interest of Steep Parish Council as an organ of local government so that the latter was paramount – such being in breach of trust;
- f. Failing to inform the residents and beneficiaries of Steep timeously of the contents of the meeting between Steep Parish Council and the SDNPA of the 14 November 2016 including the fact that the SDNPA proposed (i) that the Settlement Boundary be changed so as to include the Church Road allotments thereby giving rise to a presumption of development; and (ii) the allocation on the Church Road allotments of 10-16 houses; and failing to consult the residents and beneficiaries of such proposals before agreeing to them, as Steep Parish Council duly did by letter to the SDNPA dated the 19 December 2016;
- g. Failing to explain to the residents and beneficiaries the significance of such proposals;
- h. Failing to conduct a consultation in compliance with the Gunning Principles in respect of the SDNPA proposals and of the intention of Steep Parish Council to agree to such proposals.
- i. Failing to inform the residents and beneficiaries of the contents of the meeting between Steep Parish Council and the SDNPA on the 14 November 2016 including the significant proposals that the Settlement Boundary be moved so as to include the Church Road allotments and Steep Parish Council's agreement to such change set out in the letter to

the SDNPA dated 19 December 2016 until, so far as it has been possible to ascertain, about 11 months later;

- j. Failure to appoint independent trustees of the SVWMC but rather appointed persons who were also Parish Councillors as set out in the document headed “Complaint to Commission of 8 June”;
- k. Failing to comply with its legal duty to “provide allotments if requested” in breach of section 23 of the Small Holdings and Allotments Act 1908 as amended by the Land Settlement (Facilities) Act 1919.

29. These acts done by Steep Parish Council were done as trustee. Those acts amount to unconscionable conduct: “...equity will not permit any person ... to hold a benefit [derived by unconscionable conduct] as against the person who, but for the [unconscionable conduct], would be entitled¹⁹”.
30. A trustee is required, amongst other things, to comply with the law including complying with its “legal duty to provide allotments if requested”. Trustees are required, in everything each of them does including making an application to the Commission, to adhere to the high standards of trustees: the Courts have held fiduciaries “... to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honour most sensitive, is then the standard of behaviour”.^[2] In order to comply with this high standard, Steep Parish Council should have complied with this same duty of full and frank disclosure.
31. But for the misconduct of Steep Parish Council as set out in the Statement of Case, the residents, beneficiaries and electors of the Parish of Steep would still have the allotments as they have had them since 22 April 1819. The facts, matters and circumstances set out in the Statement of Case “are such that it would be unconscionable for the present owner of the legal title of the allotments. Steep in Need, to assert its own interest and deny the beneficial interest of the residents of Steep”.
32. Steep Parish Council transferred the legal title to the allotments to Steep in Need for no consideration and accordingly Steep in Need is a volunteer. In any event, if, in the light of what is now known of the unconscionable conduct of Steep Parish Council, Steep in Need insists upon “the unconscientious retention of an advantage which has been obtained to the prejudice of the Plaintiff’s rights”, then a Court of Equity will intervene and impose itself and apply a remedy. As Lord Neuberger²⁰ has said extra-judicially: “a Court of Equity will intervene and impose itself”: “whenever the circumstances are such that it would be unconscionable for the owner of the legal title [Steep in Need] to assert his own beneficial interest and deny the beneficial interest of another [the beneficiaries and residents of the Parish of Steep]”.

Ian Geering QC (Rtd)

¹⁹ Millett J (as he then was) in *Lonrho v Fayed* [1992] 1 WLR 1 at 10 upon explaining *Homeward Bound Gold Mining Co. v. McPherson* (1896) 17 N.S.W.L.R. 281, at 319.

^[2] *Meinhard v Salmon* (1928) 164 N.E. 545 (US) per Cardozo J.

²⁰ Lord Neuberger at the Banking Services and Finance Law Association Conference, Queenstown. *The Remedial Constructive Trust Fact or Fiction*, 10 August 2014.