

Labouring Poor before and after 1919

The Award

1. The Inclosure Act 1845 received the Royal Assent on 8 August 1845. Section 31 provided authority for the inclosure to be made but it was limited generally to the waste only; and inclosures which had existed over 20 years were outside the Act. At the time of 1845, the Church Road allotments were 26 years old: they fell outside the scope of the Act.
2. The Act provides: “And be it enacted, that in the provisional order of the commissioners concerning the inclosure under the provisions of this Act of any waste land of any manor on which the tenants of such manor have rights of common, or of any land whatsoever subject to the rights of common ... it shall be lawful for the commissioners to require and specify as one of the terms and conditions of such inclosure the appropriation of such an allotment for the labouring poor as the commissioners think necessary ... “.
3. In the case of the Church Road allotments, these allotments were shown on the 1839 Tithe map and 1851 Tithe Award as existing. These allotments were created by the exercise in April 1819 of the power given to the Steep Vestry by the Poor Relief Law 1819 to create allotments for the poor of the Parish. The documents at the HRO have 13 annual lists of those who paid rent for allotments as tenants to the Vestry as land owner of the allotments and landlord from 1835, thereby creating in the hands of the allotment holder an interest in land and the relationship of landlord and tenant: the allotment holders were tenants of the Steep Parish.
4. In short, the Church Road allotments were not waste at the time of 1866 and the Inclosure Commissioners had no jurisdiction to make any award over those allotments. For this and other reasons set out in the Statement of Case the Award of 1866 is probably of no effect. However, we are where we are in that the Commission confirmed by an email dated 26 November 2009 that the Steep Allotments were held under the Award of September 1866 as a charitable trust.
5. If the Award was of effect, the position appears to be as follows. The Award of the Inclosure Commissioners dated 6 and 13 September 1866 was made under the Inclosure Act 1845. In 1866, with few in the rural community having access to horses, it is clear that in order for the rural population to be able to use allotments, those allotments had to be within walking distance of their dwellings. This requirement continues to today where allotments have to be within ¼ of a mile from the centre of habitation which they serve.
6. If this award of 1866 was effective, the legal estate of the three plots of land identified upon the accompanying 1857 Map were vested¹ in the Churchwardens and Overseers of the Poor of the Parish of Steep “in trust as an Allotment for the Labouring Poor of the said Parish”. These three allotments were functional designated parcels of land to be held to pursue a charitable purpose itself, namely the provision of allotments. The objects of the trust were “the labouring poor of the” Parish of Steep. Accordingly, in order to qualify for an allotment under this trust, the person seeking an allotment had to be both resident in the Parish of Steep and of the labouring

¹ Simcoe v Pethick [1898] 2 QB 555.

poor. These elements constituted the scheme laid out in the Inclosure Act 1845 by Parliament to assist the labouring poor.

The scheme laid out by the Inclosure Act 1845 was amended by Parliament in the Commons Act 1876

7. Halsbury's Laws 1st Edition 1907 Volume 4 at 1154 (page 540) states:

"The scope of the Inclosure Act 1845, which marked the commencement of a new era in the history of legislative dealing with the inclosure of commons, appears from its title : "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed lands; to provide Remedies for the defective or incomplete execution and for the Non-execution of the Powers of General and Local Inclosure Acts ; and to provide for the Revival of such Powers in certain Cases.

A series of amending Acts was passed to supply omissions and deficiencies which practice discovered in the original Act down to the year 1876²..." .

8. The provisions of the Inclosure Act of 1845 were amended by the Commons Act 1876 (39 & 40 Vict. c.56) *"An Act for facilitating the regulation and improvement of Commons, and for amending the Acts relating to the Inclosure of Commons"*. [11th August 1876.]. Section 26 of this Act remains in force and it provides:

"Amendment of law as to letting field gardens.

Whereas by the Inclosure Act, 1845, allotment wardens are required to let the allotments under their management to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, and are further required to demand in respect of such letting a rent not below the full yearly value of the land ... and whereas it is expedient to amend the said provisions ... Moreover, if in any parish the allotment wardens are unable to let the allotments under their management , or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet, to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector or vicar and churchwardens, overseers, managers, or any other person or persons whatever and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall have like powers and duties as are hereinbefore given to and imposed upon allotment wardens".

² The Commons Act 1876.

9. Halsbury's Laws 1st Edition 1907 Volume 4 at paragraph 1256 (page 593) cites the above but adds³:

"These powers of letting must, however, be read in conjunction with the powers conferred on parish council with reference to allotments under their charge" citing at note 'r' the Small Holdings and Allotments Act 1908 ss 27 – 30, 33(4)". Halsbury's Laws 5th Edition 2017 Volume 1 paragraph 700 has this:

"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 within a period not exceeding 12 months if it should at any time be required for letting for allotments" citing at note '3': Small Holdings and Allotments Act 1908 s. 27(5) as amended by the Statute Law (Repeals) Act 1993".

10. Halsbury's Laws 1st Edition 1907 Volume 4 at paragraph 1256 (page 593) shows at note 'n':

"Under the Inclosure Act 1845 ... allotments for field gardens were to be set out to, and the legal estate vested in, the churchwardens and overseers of the parish, but were to be under the management of allotment wardens, who were to be elected and to hold office in manner directed by the Act (s.108). But under the Small Holdings and Allotments Act 1908 s.33(3), which is practically a re-enactment of the Local Government Act 1894, s. 6(4), where any act constitutes any persons wardens for allotments or authorises or requires the appointment or election of any wardens, committee, or managers for the purposes of allotments in a rural parish, then the powers and duties of the wardens, committee, or managers shall be exercised and performed by the parish council ... and it shall not be necessary to make the said appointment or to hold the said election, so that the powers and duties of the allotment wardens stated in the following pages [593 to 595] will now apply to the parish council ...".

11. Section 33(4) of the Small Holdings and Allotments Act 1908 provides: "The provisions of this Act relating to allotments shall apply to land vested in, or the management whereof has been transferred to, a council ...". In *Snelling v Burstow Parish Council*, the Court of Appeal said: "Section 33(4) therefore applies the provisions of the 1908 Act not only to allotment land, the management of which is transferred to a council under s.33 ("this section"), but also where the management of the land is vested in the council under s.6(4) of the LGA 1894. In both cases the land is treated as if it had been acquired by the council under s.25 of the 1908 Act, one consequence of which would be that the relevant council would appear to have the benefit of the power of sale contained in s.32 of the 1908 Act" ... "The more natural reading of s.33(4) is that it was intended to apply to any statutory provision which had the effect of transferring the management of the allotments to the council per Patten LJ in *Snelling v Burstow Parish Council*".
12. From the above, it is the case that the original scheme laid down by the 1866 award made by the Inclosure Commissioners under the Inclosure Act 1845 was amended and replaced by a new scheme set out in section 26 of the Commons Act 1876 (headed "Amendment of law as to letting field gardens") under which the objects of the trust were changed so as to confer benefit, in the first place, to the labouring poor of the parish but, if the allotment wardens are unable to

³ Halsbury's Laws 1st Edition Volume 4 paragraph 1256 (page 593 to 594).

let the allotments to the poor inhabitants of the parish, the benefit was to be conferred upon and the allotments let to any other person on such terms as enabled the allotment warden to resume possession within a period not exceeding twelve months.

13. The number of allotments at the Church Road site are eleven (11). A letter dated 3 April 2010 sent by a local resident on behalf of the Central Steep Residents' Group to the Commission mentions that there were 18 applicants, thereby giving rise to a waiting list of 7 residents. This letter said this:

“Re: DISPOSAL OF LAND AT STEEP VILLAGE

On behalf of the Central Steep Residents' Group (CSRG), I am writing to you with regard to land in Steep, held in trust by the Parish Council (PC) for use as allotments, and which is currently the subject of correspondence between you and Mr Tony Hanlan - see his letter of 5 Nov 09 and your reply Ref: CC 05181013 dated 25 Nov 09, and his letter of 23 Mar 10.

The purpose of this letter is to make you aware of the strong demand for allotments on this site. This is due to a combination of factors mainly: -

- The nationwide resurgence of allotments.
- The changing population, bringing young families into the village who want to grow their own food.
- The tendency towards smaller gardens with less space for growing vegetables
- A desire to enhance community spirit in the village.

In response to this demand, in November 2007, the PC instructed one of the councillors to call a meeting of those interested with the aim of getting a scheme under way. Much hard work was put in by members of the community, which included setting up of an Allotment Association, drafting of Tenancy Agreement, diagrams of possible layout of the land, together with an outline programme for the Way Ahead. The scheme was, and still is fully supported by Bedales School, a *major* landowner, who undertook to provide expert advice and assistance including machinery and manpower, thus further cementing the bond between school and village.

Unfortunately, at their next meeting in January 2008, the Parish Council refused the allotment scheme on grounds that it would jeopardise their plan for affordable housing on this site. Subsequent requests for use of this land have also been refused. This is clearly in breach of trust, and as a result, this valuable amenity is not being used, and lies idle and neglected.

You should also be aware that only since your reply to Mr Hanlan on 25 Nov 09, have we known that this land is held on trust for allotments. Had we known this in January 2008, we would have challenged the Parish Council's refusal to allow allotments on this site long ago.

To date, there are 18 applicants for allotments, and in hope that the purpose of the trust will be upheld, we are revitalising the allotment association and updating 2007/08 plans for setting up the allotments. We have also engaged the services of a landscape architect to assist.

We are concerned that the Parish Council will seek to change the status of the trust in order to build 9 affordable houses on this central site. There are other sites for affordable houses within the Parish”.

14. The Commission, by Mr Hughes-Jones, replying by email dated the 6 April 2010 (Subject: Steep Allotments CC:00700062) wrote:

“It is plain that there is local demand for the allotments and, separately, that there is considerable local opposition to the proposed sale and development of the land”.

15. Judging by the Commission’s decision contained in their letter dated 14 April 2010 which was read out at the public meeting held on the 1 February 2020, the Commission must have looked into the status of the 18 applicants: 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 labouring poor, let’s just face it. It went on to say, the Charity Commission [s.l⁴ . arguing 00:35:15] for a change in projects of, on the grounds that there were no poor in Steep”.

I am not aware of any documents emanating from the Commission to show (and no documents have been disclosed pursuant to the FOIA which show) how the Commission concluded that all 18 applicants were not poor and were not within the class “labouring poor”.

16. Under the “Amendment of law as to letting field gardens” contained in section 26 of the Commons Act 1876, all the 18 applicants would have qualified to take the allotments in Church Road by reason of the words of that section:

“... if in any parish the allotment wardens are unable to let the allotments under their management , or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet, to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, it is should at any time be required for such poor inhabitants as aforesaid”.

17. In the Decision of the Charity Commission for England and Wales Hughenden Community Support Trust⁵ – Application for removal from the register of charities” the Commission held:

“21. The Commons Act 1876, in its Preamble, stated that allotments that were created for the labouring poor under the Inclosure Acts 1845 to 1868 were to be referred to in that Act as ‘field gardens’.

⁴ Stenographer’s note for “sounds like”.

⁵ Dated 20 December 2016.

- Section 26 of the Commons Act 1876 provided power to let any allotments not required for the labouring poor at best rent obtainable”.

...

Small Holdings and Allotments Act 1908 ...

25. In summary the key provisions were as follows:

- Section 23 imposed a duty on local authorities, including the Parish Council, to provide a sufficient number of allotments, and let such allotments to persons belonging to the labouring population.

...

26. The Land Settlement Act 1919 removed reference to ‘labouring’ from the 1908 Act.”

It was the conclusion set out in the letter dated 14 April 2010 from the Commission which crushed the residents: the conclusion was in error. In this regard, the Commission failed to give help and advice to the beneficiaries which should have included the fact that trusts holding designated land for allotments were operated on the footing that applicants did not need to show that they were poor or that they fell within the description of labouring poor; and were operating on the basis that all a person needed to show was that that person was resident in the Parish. The material contained in the document headed “Inquiries of other charities for the labouring poor Redacted” show that, in other Parishes which have been contacted, there was no requirement of a person resident in a parish to have to show that he or she was poor. One of the responses received from those managing another charity said this:

“The Council considers the allotments to be a community amenity and aims to ensure that they are run in such a way that they are accessible to any resident of XXX parish, so there is no further requirements needed”. [Emphasis added].

18. In this connection, it is to be noted that under cover of a letter dated 10 June 2010 (after the Commission’s decision contained in the letter of the 14 April 2010), the Steep Parish Council sent to the Charity Commission the Steep Allotment Society Plan (as “Enc.4”) and said:

“About two years ago, an Allotment Association was formed and they have been developing alternative ideas about the development of the land, effectively as combined recreation ground, allotment beds and orchard. This difference of opinion about the use of the land culminated in a “referendum” among the residents of the Parish. I enclose a late draft of the document used in connection with that. (Enc 3) The result was that of 536 (63%) votes cast by the 844 residents of the Parish who voted, 280 (52.2%) were in favour of the “allotment” plan, and 256 (47.8%) were in favour of the social housing proposals. The Allotments Association’s proposals were presented formally to the Parish Council only this week and a copy of the slides supporting that presentation is included (Enc 4)”. Enclosure 4 was described as “Steep Allotment Society Presentation Document”.

The Allotments Association’s proposals encompassed:

“- A village green space, orchard, wild meadow and play area for all, and allotments for those who want to grow,

- a place in which the community can get together; the education of children; maintaining traditional skills; providing land and amenities for food production and environmental sustainability;

Interested Parties ---- 23 allotments requested including: Steep Householders, Steep Welcome Club, Steep School, Jubilee Nursery, church flower growers, Wednesday Toddler Group”

These proposals are attached to the email by which this document is sent to the Tribunal and it will be seen that they amount to a Village Community Amenity such as is mentioned by the other allotment manager mentioned above).

19. The reference in section 18 of the Commons Act 1899⁶ to “any provisions with respect to allotments for ... field gardens ... contained in any Act relating to inclosure” is a reference to the Inclosure Act 1845 as amended by section 26 of the Commons Act 1876. Under paragraph 4.2 of the Charity Commission guide “Changing your charity’s governing document”, the following appears:

“The commission can make a scheme to change the objects of a charity when the current objects ... can no longer be carried out, or not in the way laid down in the governing document.

In agreeing new purposes, the commission must apply the legal doctrine of ‘cy-près’ – Norman French for ‘close to’ - to ensure that they take account of the spirit (or underlying intention) of the existing objects and of current social and economic circumstances”. As from 1876, “the governing document” means the award made under the Inclosure Act 1845 as amended by the Commons Act 1876.

The background to the Land Settlement (Facilities) Act 1919

20. The United Kingdom Census 1911 of 2 April 1911 revealed that the total population of the United Kingdom was approximately 45,221,000. The total number of dead from the First World War is now estimated at 1,350,000. There was virtually no Village or town in the country which was untouched by the slaughter of the First War. The total number of British Forces⁷ wounded amounted to 2,289,860 persons. Within days of the Armistice of the 11 day of November 1918, Lloyd George said on the 24 November 1918:

⁶ Commons Act 1899; s.18 Power to modify provisions as to recreation grounds, &c.

“Any provisions with respect to allotments for recreation grounds, field gardens, or other public or parochial purposes contained in any Act relating to inclosure or in any award or order made in pursuance thereof, and any provisions with respect to the management of any such allotments contained in any such Act, order, or award, may, on the application of any district or parish council interested in any such allotment, be dealt with by a scheme of the [Charity Commission] in the exercise of [its] ordinary jurisdiction, as if those provisions had been established by the founder in the case of a charity having a founder”.

⁷ Total British Army wounded in action, plus other casualties (e.g. accidental): if a man was wounded twice he appears here twice: 2,272,998. The Royal Navy and RFC/RAF casualties were 16,862.

“What is our task? To make Britain a fit country for heroes to live in. I am not using the word ‘heroes’ in any spirit of boastfulness, but in the spirit of humble recognition of fact. I cannot think what these men have gone through. I have been there at the door of the furnace and witnessed it, but that is not being in it, and I saw them march into the furnace. There are millions of men who will come back. Let us make this a land fit for such men to live in. There is no time to lose. I want us to take advantage of this new spirit. Don’t let us waste this victory merely in ringing joy bells.”

21. The Government brought in the amending Bill (which was to become Land Settlement (Facilities) Act 1919) on the 14 April 1919. On that day, the Parliamentary Secretary to the Board of Agriculture (the Government Department which governed allotments) said:

“This Bill is brought in in order that the Government may have an opportunity of redeeming a pledge given not merely by the Government, but by the country to some of our gallant soldiers, that those who have the inclination and those who have the qualifications may have a chance of settling on the land. After all, it is not altogether wonderful that men who fought for the country should desire in many cases to have an opportunity of cultivating part of the country for which they fought, and this Bill is designed to enable the Government by the quickest and most efficient process to carry out that promise. We think that this land settlement will be a good thing for many of these men, and we believe it will be a good thing for the country too”.

22. The number who came back was 2,289,860 many suffering from shell shock. The Small Holdings and Allotments Act 1908⁸ had applied to the Steep allotments since 1908. (It still applies.) As part of the reconstruction following the Armistice, the 1919 Act amended the 1908 Act⁹ by abolishing the limitation (wherever it existed) that granting of an allotment was to be limited to the poor. In the case of existing allotments (which the Steep Allotments are) the abolition meant that plots were available to any resident of the Parish who requested it¹⁰. Those millions returning home from France in 1919 were to be entitled from 1919 onwards to take existing allotments which were vacant merely upon their requesting – part of the Land fit for Heroes: having fought for their Country, they did not have to suffer the indignity of proving that they were poor. As regards allotments, the notion and limitation of “the labouring poor” had forever been abolished by Parliament whether in the case of a returning serviceman in 1919 or his grandchildren in 2021.

The Church Road land in question is designated land: that is, using the Charity Commission’s own words, “land that is required to be used for a particular purpose of the charity”. The designated land in Church Road was to be used for the purpose of the charity – and that purpose was to provide allotments to any person resident in the parish: that in itself is charitable.

23. Contemporaneously to the present matter, the Commission was concerned in another matter which came to be decided on 20 December 2016 (available to the public online) called: Decision

⁸ The Chairman gave a lecture on the workings of the Act to the Council and 30 Parishioners as shown by the minutes of 10 February 1908.

⁹ Land Settlement (Facilities) Act 1919.

¹⁰ In respect of existing allotments: “... the Council shall let such allotments to persons resident in the ... parish, and desiring to take the same” - Small Holdings and Allotments Act 1908 s.23 as amended by the Land Settlement (Facilities) Act 1919.

of the Charity Commission for England and Wales. Hughenden Community Support Trust – Application for removal from the register of charities” (“the Commission’s Hughenden Decision”). This decision arose out of a Scheme made by the Commission dated 7 October 2015 which the Applicant in that case challenged. The date of the scheme made by the Commission in the case of the Steep Allotments was the 23 October 2015: this was made upon the application of Steep Parish Council and Steep in Need and was not the subject of a legitimate consultation (in that it offended the Gunning Principles).

24. In the Commission’s Hughenden Decision, the Commission held as follows:

“Land Settlement (Facilities) Act 1919

43. The 1919 Act removed reference to the ‘labouring’ in section 23 of the 1908 Act.

44. This raises the question whether, as a result, the land was held by the Parish Council for the statutory purpose of allotments under section 23 and without reference to the charitable class of beneficiaries such that the land ceased to be held upon charitable trust.

45. The question was raised in the case of *Snelling* but was not considered further. Lord Justice Patten in the Court of Appeal observed:

‘The judge (referring to the decision in the High Court) expressed the view that the possible cessation of the charitable trust by the exercise of the s.32 power could be regarded as consistent with a dilution in the 1876 Act and in subsequent legislation of the requirement that the allotments should be the exclusive preserve of the labouring poor of the parish. 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. But it is not in my opinion necessary to attempt to delve further into that particular issue.’ [Emphasis supplied.]

46. The matter for consideration in *Snelling* related specifically to whether the power of sale in section 32 was exercisable or whether the relevant parish council could only rely on the provisions in section 27 of the Commons Act 1876. The conclusion was that both were exercisable:

‘The better view is that these are different, although overlapping provisions, and the Council may choose between them.’

47. Accordingly this suggests that the charitable trust had continued in existence alongside the powers provided to the council under the 1908 Act. The removal of the reference to ‘labouring’ in section 23 of the 1908 by virtue of the 1919 Act did not extinguish the charitable trust upon which the land had transferred to the local authority. Section 23 was a provision imposing, as set out in the side note to the section ‘a duty of certain councils to provide allotments’. As originally enacted it read:

‘If the council of any borough, urban district, or parish are of opinion that there is a demand for allotments for the labouring population in the borough, urban district, or parish and that such allotments cannot be obtained at a reasonable rent and on reasonable conditions by

voluntary arrangement between the owners of land suitable for such allotments and the applicants for the same, the council shall provide a sufficient number of allotments; and shall let such allotments to persons belonging to the labouring population resident in the borough, district, or parish, and desiring to take the same.

48. The provision imposed the duty to provide allotments and the sections which followed gave power to purchase land for that purpose and to manage such land. The effect of the removal of reference to the labouring was to extend and widen the duty of the local authority to provide allotments beyond the labouring population.

49. For the same reasons as set out in paragraph 41 such allotments, including the Hughenden Allotments, continued to be held upon the declared trust as allotments for the labouring poor. There was no express revocation of the trust in the 1919 Act and such revocation could not be implied. The provision of allotments for the labouring poor was not inconsistent with the wider power of the local authority to provide allotments”.

25. These paragraphs support the view that as regards Allotments, there are two separate jurisdictions each of which need to be considered in the case where a Parish Council wishes to dispose of an allotment. In every case, the Council is required to seek the consent of the Secretary of State for such disposal under section 8 of the Allotment Act 1925; a process in which the Secretary of State requires the National Allotments Society to be notified, consulted and involved. In some cases, there may be a need to approach the Charity Commission under the Commons Acts 1899.

26. The decision in *Snelling v Burstow* is an important: it is dated the 12 November 2013 and reported at [2013] EWCA Civ 1411: it was contained in [2013] WLR(D)¹¹ 433, [2014] 1 WLR 2388, and [2013] 47 EG 129. This judgment and the reference to the effect of the Land Settlement (Facilities) Act 1919 was not reflected in any of the material which the Commission has provided to me under the FOIA in its deliberations which led (about 2 years after the Snelling Judgment) to the granting of a new scheme in relation to the Steep allotments on the 23 October 2015.

Bearing in mind that *Snelling v Burstow* was reported from 2013 and that *Snelling v Burstow* is widely quoted in the Commission’s Hughenden Decision of the 20 December 2016, it seems fair to say that the analysis of the Acts of Parliament contained in that decision must have been the subject of debate in the Commission contemporaneously with the application of October 2013 under the Commons Act 1899 made by Steep Parish Council and Steep in Need which took about 2 years: the Commission made the scheme on the 23 October 2015. Bearing in mind that there are 335 registered charities on the Commission website¹² which concern allotments, it is safe to assume that the Commission regard part of their function to keep up to date with judicial decisions concerning allotments; and that the rebuttable presumption is that they knew of the decision in *Snelling v Burstow* shortly after that decision was made in November 2013.

¹¹ The WLR Daily case summaries at [2013] WLR (D).

¹² At https://register-of-charities.charitycommission.gov.uk/charity-search?p_p_id=uk_gov_ccew_portlet_CharitySearchPortlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&uk_gov_ccew_portlet_CharitySearchPortlet_mvcRenderCommandName=%2Fadvanced-search.

27. In the Commission's Hughenden Decision at paragraphs 25 and 47 (set out above), the Commission referred to "Section 23 was a provision imposing, as set out in the side note to the section 'a duty of certain councils to provide allotments'". In its application under the Commons Act 1899, it was admitted that, to use Steep Parish Council's own written words, "SPC [Steep Parish Council] is under a legal duty to provide allotments if requested"¹³.

Accordingly, in the case of existing allotments, such as the Church Road allotments, Steep Parish Council was required by virtue of section 23 of the Small Holdings and Allotments Act 1908 as amended by the Land Settlement (Facilities) Act 1919 to "let such allotments to persons resident in the ... parish, and desiring to take the same". The "current objects" of the trust were, since the Commons Act 1876, the Small Holdings and Allotments Act 1908 and the Land Settlement (Facilities) Act 1919 and remain, the holding of the allotments on trust for and on behalf of the residents of Parish of Steep: that is in itself charitable. Trusts in general terms for the inhabitants or a class of the inhabitants of particular localities which have been upheld include *Re Mann* [1903] 1 Ch 232 (a parish); *Wright v Hobert* [1723] 9 Mod Rep 64 (a village); *Re Norwich Town Charity* (1888) 40 Ch D 298; *Stanley v Norwich Corp*n (1887) 3 TLR 506 (a borough); *A-G v Carlisle Corp*n (1828) 2 Sim 437, *Mitford v Reynolds* (1842) 1 Ph 185 (a town). That accords with the change which Parliament imposed after the Armistice by the Land Settlement (Facilities) Act 1919: Parliament, the Government and the People would all have been more than surprised if, a month after the coming into operation of this 1919 Act, those returning from the trenches were told that they had to prove that they were poor or of the labouring poor.

28. As from 1919, there was never any question that to qualify for an allotment at the Church Road allotments, a resident of the Parish of Steep had to be poor. A person resident in the Parish was the only qualification for a vacant existing allotment.

In the words of the Halsbury's Laws 5th edition of 2017¹⁴ the present law is that the Small Holdings and Allotments Act 1908 provides¹⁵ that,

"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 within a period not exceeding 12 months if it should at any time be required for letting for allotments"

The letting of the Church Road allotments for a purpose other than as an allotment such as grazing which may have occurred since 1908 must be read in this context.

Steep Parish Council's documents at the Hampshire Record Office

¹³ As set out in paragraph 8 of Steep Parish Council's application for a scheme under the Commons Act 1899 and submitted to the Charity Commission in 2013.

¹⁴ Volume 1 'Allotments', Halsbury's Laws 5th edition, 2017, para 700 p. 509.

¹⁵ Small Holdings and Allotments Act 1908 as amended by the Statute Law (Repeals) Act 1993.

29. The minutes of the Council at the HRO show that vacant allotments at all three sites were offered for letting to persons resident in the parish and that if allotments were unlet, they were let to those who were not resident in the parish.

This practice continued throughout until the time when the Council in breach of the Small Holdings and Allotments Act 1908 and in breach of trust decided not to let allotments to persons resident in the Parish of Steep who requested one and padlocked the gate.

The Council minutes of the meeting of the 10 February 1908 show that there were 30 Parishioners present and that:

“The Chairman [Colonel St N A Hammick] said the reason for calling the Meeting was on account of the Small Holdings and Allotments Act 1907 (sic) and he was there to give what information he could ...”

30. Thereafter the allotments were administered by Allotment Authority (the Council) under that Act and the allotments were treated as allotments regulated by the 1908 Act. The return of the Council in response to the National survey carried out in 1996 (set out in the Statement of Case at paragraph 40) has the positive and confirmatory statement that the allotments were statutory.

31. The need for allotments to be available to those living within walking distance (which is currently taken to be $\frac{3}{4}$ of a mile) of the centre of habitation is shown by the location of Bowyers Common allotments (the Steep Marsh allotment which served the hamlet of Steep Marsh); and of the Church Road allotments (which served the hamlet of Steep Common – the name used in the 1841 census and 1851 census); and the allotments which served the hamlet of Steep Stroud (now called Ridge Common Lane allotments). This notion was the reason for the entry in the Council minutes of the 16 August 1925 which reads:

“Bowyers Allotments. No 2 allotment had been given up by Mr Bowell. Mr G Canneaux of Steep made application for this plot. This, however, was not granted, as the Council was of opinion that Bowyers Allotments should be reserved by people living at that end of the Parish, if possible.”

The clerk reported that he had received two applications for vacant allotments, one from Mr H W Lawrence of Catherington, who was shortly to take up residence in Steep, and another from Mr H Watts, of Sussex Road, Petersfield and it was resolved to let a plot of allotments to both applicants, but to point out to the latter applicant, that should the demand for allotments by parishioners exceed the number vacant that this tenancy would have to be terminated”. The Allotment Rent Ledger available at the Hampshire Record Office shows many examples of persons not resident in the Parish holding allotments at Church Road.