

Dear Parish Councillor,

I refer to my earlier emails sent to you.

In my first email sent to you on the 8 December 2021, I wrote:

"The prior proposal of Steep Parish Council and the trustees of the Steep War Memorial Village Club was to sell part of the land near the Village Hall to the developer of the remaining part of the Church Road allotments. Any such sale would be furthering the fraud of which complaint is made in the Statement of Case and the Legal Submissions lodged with and read by the Tribunal". It is to be noted that, as part of the joint venture, Steep Parish Council was contributing towards the proposed housing development part of the land near the Village Hall which was, and remains, held on trust for the residents of Steep.

That same notion applies to any present or future proposal of Steep Parish Council and the trustees of the Steep War Memorial Village Club to sell part of the land near the Village Hall to the developer of the remaining part of the Church Road allotments. It is to be remembered that part of the material, which was lodged with, and read by, the Tribunal was this paragraph:

"From a date which is unknown, but which was no later than early 2013 and probably was from the date of the appointment of new trustees to hold the legal estate of the Steep allotments in 2012, the development of the Church Road allotments was one that was a joint enterprise between Steep Parish Council and Steep in Need < the common design was to develop the Church Road allotments. ... Each submitted in October 2013 an application for a scheme (in virtually identical terms) and each appointed the same person, Mr Jeremy Young a trustee of Steep in Need to act as agent for both Steep Parish Council and Steep in Need. ... Each was engaged jointly in the development of an overall development plan: the letter of the [Charity Commission] case worker, [REDACTED], dated 9 September 2021 to a resident under the heading "The Steep War Memorial Village Club (241760)" described the matter thus:

"The charity [the SWMVC] originally planned to dispose of some its land as part of the overall development plan" meaning the plan to develop the land, the legal estate of which was and is held by Steep in Need and Steep Parish Council (my emphasis)".

As is set out in paragraph 18 of the Legal Submissions, the principle upon which the Court proceeded in the *Homeward Bound* case was that "equity will not permit any person ... to hold a benefit [derived by fraud] *as against the person who, but for the fraud, would be entitled*"; and in paragraph 22 of the same document: 'But for the unconscionable conduct (described in the Statement of Case and here) on the part of Steep Parish Council, the land at Church Road would have remained designated for the purpose of providing allotments and would still have remained within the beneficial ownership of the residents of Steep and the residents of Steep would still have the right to have a lease of a vacant plot at Church Road upon requesting'; In short, Steep Parish Council cheated the residents and beneficiaries of Steep out of their rights relating to the Steep allotments including the contingent property right to a lease of a vacant allotment plot under section 23 of the Small Holdings and Allotments Act 1908 as amended by doing the acts of which complaint is made in the Statement of Case and Legal Submissions. Any such proposal to sell part of the land near the Village Hall to the developer would be an act which would further the fraud.

How then is Steep Parish Councillors to behave now that it presently knows of the fraud? That which Lord Nichols said in *Royal Brunei Airlines v Tan*¹ provides guidance:

“If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour.

In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property. Unless there is a very good and compelling reason, an honest person does not participate in a transaction if he knows it involves a misapplication of trust assets to the detriment of the beneficiaries. Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless; <

The only answer to these questions lies in keeping in mind that honesty is an objective standard. The individual is expected to attain the standard which would be observed by an honest person placed in those circumstances. It is impossible to be more specific. Knox J. captured the flavour of this, in a case with a commercial setting, when he referred to a person who is "guilty of commercially unacceptable conduct in the particular context involved": see *Cowan de Groot Properties Ltd v. Eagle Trust plc* [1992] 4 A.E.R. 700, 761. Acting in reckless disregard of others' rights or possible rights can be a telltale sign of dishonesty. An honest person would have regard to the circumstances known to him, including the nature and importance of the proposed transaction, the nature and importance of his role, the ordinary course of business, the degree of doubt, the practicability of the trustee or the third party proceeding otherwise, and the seriousness of the adverse consequences to the beneficiaries. The circumstances will dictate which one or more of the possible courses should be taken by an honest person. He might, for instance, flatly decline to become involved. He might ask further questions. He might seek advice or insist on further advice being obtained. He might advise the trustee of the risks but then proceed with his role in the transaction. He might do many things. Ultimately, in most cases, an honest person should have little difficulty in knowing whether a proposed transaction, or his participation in it, would offend the normally accepted standards of honest conduct,

Likewise, when called upon to decide whether a person was acting honestly, a court will look at all the circumstances known to the third party at the time. The court will also have regard to personal attributes of the third party such as his experience and intelligence, and the reason why he acted as he did”;

Steep Parish Council is subject to the rule of law that honesty is a duty of universal obligation² and it is no business of an organ of local government to engage in the furthering of a fraud upon a section of the people: everyone should make sure there is no fraud in government.

Yours faithfully,

Ian Geering QC (Rtd)

¹ *Royal Brunei Airlines v Tan* [1995] 2 AC 378 at

² *Nocton v Lord Ashburton* [1914] AC 932; per Viscount Haldane at 954.