Dear Sir,

The law as I understand it is as follows.

Now that you have all the material attached to the emails which I sent to you on the 29 November 2021 and 4 December 2021, you are taken to have read that email and the material attached. That material has formally put you and South Downs National Park Authority ("SDNPA") on notice of the fraud of which complaint is made in the Statement of Case and Legal Submissions together with the other attachments, all of which were submitted to, and read by, the First Tier Tribunal. The object of the fraud was to dispose of and sell the Church Road allotments for development into housing: the means which Steep Parish Council used is set out in the documents attached to my two emails referred to above and includes, to mention only two, breaches of trust and making material misstatements in its application to the Charity Commission for an order under the Commons Act 1899.

It might be supposed, and Steep Parish Council might argue, that the Council can take comfort from the fact that it applied in 2013 to the Charity Commission for an order upon which the Council can rely. The flaw in this argument is that in applying to the Commission for an order, the Steep Parish Council made statements in their application which are <u>now</u> known to be untrue in material respects – as set out in the Statement of Case and the Legal Submissions – and in addition the Steep Parish Council failed to comply with its duty of full and frank disclosure in making its application to the Commission, particulars of which are contained in the material.

In *Reese River Silver Mining v Smith (1869-1870) LR 4 HL 64* Lord Cairns said at 79:

"But I apprehend it to be the rule of law, that if persons take upon themselves to make assertions as to which they are ignorant whether they are true or untrue, they must, in a civil point of view, be held as responsible <u>as if they had asserted that which they knew to be untrue</u>. Upon that part of the case, my Lords, I apprehend that there is no doubt".

The SDNPA is the planning authority for the National Park. The Authority is a public body, funded by government.

The Government in its "Review into the risks of fraud and corruption in local government procurement" published in June 2020, the Minister for Regional Growth and Local Government wrote:

"We must all play our part in creating a culture hostile to the risks of fraud … , clearly setting out the line between acceptable and unacceptable behaviour within our organisations". This instruction must apply to the SDNPA.

It also follows that it is incumbent on all of us, including the SDNPA, to make sure that no fraud is allowed to come to fruition. I am taking such steps which I can, as an individual, to ensure that the fraud of which complaint is made against Steep Parish Council (as trustee and an organ of local government) as set out in the material which you have read, does not come to fruition.

It is the policy of the Court and the Government to uphold the law. This is reflected in the many codes of conduct. In *Ridehalgh v Horsefield [1994] 3 WLR 462*, the Master of the Rolls, Sir Thomas Bingham, giving judgment in the Court of Appeal held that a solicitor is under a duty to promote the cause of justice in his own sphere. This is reflected in the Solicitors Code of Conduct to uphold the rule of law and the proper administration of justice and to act with integrity: so it is with Civil Servants. Even Sir Thomas Bingham himself, in swearing the Judicial Oath, came under a duty like all judges "… **do right** to all manner of people **after the laws and usages of this realm**, without fear or favour, affection or ill will." Those laws and usages include the principles of Equity relied upon in this case. Similarly, we, as citizens, are all obliged to uphold the rule of law living, as we do, in a democracy under the rule of law.

In November 2019, I was asked to help the residents in Steep, Hampshire (where I live) in trying to fathom how the Church Road allotments in Steep (which were protected from development by being outside the Settlement Boundary and held and protected by trustees, namely Steep Parish Council, with all the onerous obligations of a trustee to safeguard the assets (the allotments) for the designated purpose of allotments and with no power to sell became at risk when, without their knowledge or consent, the Settlement Boundary was changed. That change meant that the allotments became subject to the presumption that they would be developed. This change was all the more perplexing since the only event between the two positions was a Referendum held in May 2012 by which the people of Steep voted to reject the Steep Parish Council's then proposal to dispose of the site for housing.

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*". Richard Coles [the immediate past Chairman on whose watch the Referendum took place] was reported to have said "*They [residents] wanted allotments …It was a very, very good turnout and most of the Parish had their say*".

Steep Parish Council was at all material times (a) trustee of the Steep allotments until the three allotments were transferred for no consideration to Steep in Need; and (b) trustee of the Steep War Memorial Village Club (which continues).

The critical feature of the relationship between trustee and beneficiaries as with any fiduciary relationship is that the trustee or the fiduciary *"undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense. The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person who is accordingly* ***vulnerable to abuse by the fiduciary of his position****"*[1] *[emphasis added].*

For this reason, 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]*"*.

Steep Parish Council abused its fiduciary position.

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[1] Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41 at 97-97 per Mason J (Australia).

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

As mentioned in paragraph 14 of the Legal Submissions, Viscount Haldane LC said in *Nocton*[3] *v Lord Ashburton*[4]:

"[W]hen fraud is referred to in the wider sense in which the books are full of the expression used in Chancery in describing cases which were within its exclusive jurisdiction, it is a mistake to suppose that an actual intention to cheat must always be proved.

A man may misconceive the extent of the obligation which a Court of Equity imposes on him. His fault is that he has violated, however innocently because of his ignorance, an obligation which he must be taken by the Court to have known, and his conduct has in that sense always been called fraudulent, even in such a case as a technical fraud on a power. It was thus that the expression "constructive fraud" came into existence.

The trustee who purchases the trust estate, the solicitor who makes a bargain with his client that cannot stand, have all for several centuries run the risk of the word fraudulent being applied to them.

What it really means in this connection is, not moral fraud in the ordinary sense, but breach of the sort of obligation which is enforced by a Court that from the beginning regarded itself as a Court of conscience".

In *Cargill v Bower (1878) 10 Ch D 502* Fry J said:

"I conceive the general law to be this, that the persons responsible for a fraud are of two classes. First, the actual perpetrators of the fraud, the authors of it, the agents who commit it, the parties to it; those who concur in it, who either do something to produce the fraudulent result, or abstain from doing something which they are under an obligation to the deceived person to do in order to prevent fraud …".

Accordingly, a person who comes to know of the fraud of which complaint is made in the Statement of Case and Legal Submissions cannot, after acquiring such knowledge, lawfully take any step which furthers the fraud: such a person would properly be described as coming within the words "those who concur in it, who … do something to produce the fraudulent result". If such a person takes such a step, he would be acting unlawfully and fraudulently: the *Attorney-General (NT) v Kearney* [1985] HCA 60[5] draws no distinction in this context between acting unlawfully and fraudulently. This applies to any natural or legal person including the SDNPA. The granting of permissions or whatever in the context of planning affords no exception.

It is apparent to a reader of the material which I sent you that a key event in the matters complained of was the changing of the Settlement Boundary and the confidential meeting of the 14 November 2016 and the confidential correspondence that followed. You will see in the material sent to you in my first and second email to you the practical effect upon the residents and beneficiaries of that

[3] Nocton was Lord Ashburton's solicitor and the case dealt with the obligation of a fiduciary, the solicitor.
[4] [1914] AC 932 at 954.
[5] The conduct complained of was the existence of a scheme to defeat land claims and so to evade the operation of the Land Rights Act through an abuse of the power to make regulations conferred by the Northern Territory's planning legislation.

secret meeting of the 14 November 2016 and the confidential correspondence which followed. At that time, the misconduct of which complaint is made was unknown to many, including me. It may be that Steep Parish Council, to paraphrase Viscount Haldane LC, "may [have] misconceive[d] the extent of the obligation which a Court of Equity imposes on [it]. [Its] fault is that [it] has violated, however innocently because of [its] ignorance, an obligation which [it] must be taken by the Court to have known". As regards Steep Parish Council, the position now is different: the Steep Parish Council now knows the extent of the obligation which a Court of Equity imposes on it and Steep Parish Council cannot claim ignorance.

On the 4 December 2021, I sent to Surrey Hills Solicitors, who acted for and on behalf of Steep in Need, two emails attaching the same material which I sent to you: but because I had not received an acknowledgment of receipt, I resent the same two emails and the same attachments to Surrey Hills Solicitors on the 17 December 2021; to which I received and acknowledgement of receipt on the 20 December 2021.

By two emails sent by me to Steep Parish Council dated 24 November 2021, I attached the same material that I previously sent to you. In the first email I said:

"This is the first of two emails containing the result of an investigation into the conduct of the Steep Parish Council: you will see that this is based almost entirely on documentary material. If you find that there are some inaccuracies, I would be pleased to receive documentary material showing such inaccuracies. The attachments were submitted to and read by the First Tier Tribunal".

I have only received an acknowledgment that the two emails had been received: no other response has been made.

In *Williams v Quebrada Railway, Land & Copper Company* [1895] 2 Ch 751 Kekewich J held at 755:

"… where there is anything of an underhand nature or approaching to fraud, especially in commercial matters, where there should be the veriest good faith, the whole transaction should be ripped up and disclosed in all its nakedness to the light of the Court".

Williams v Quebrada Railway was approved by the Court of Appeal in *Gamlen v Rochem* (7 December 1979) unreported (a case involving, amongst other things, the defendants' breach of fiduciary duty; namely breach of "their express or implied contractual obligations and their duty of good faith towards their employers", the Plaintiffs) in which Templeman LJ (as he then was) held:

"In *Williams -v- Quebrada Railway, Land & Copper Company* (1895) 2 Chancery at page 751, Mr Justice Kekewich rightly held that the same principle applies the case of civil fraud, and this was finally clearly recognised and established by two cases in the House of Lords from which the learned Judge [Mr Justice Goulding] quoted fairly extensively in his judgment. They are *Bullivant -v- Attorney General for Victoria* (1901) Appeal Cases, 196, and *Q'Rourke -v- Darbishire* (1920) Appeal Cases 581. I think it is sufficient for my purpose if I cite only the last of the extracts which appear in the learned Judge's judgment, and that is reading from Lord Wrenbury, at page 633 of the *0' Rourke* case:

"If I venture to express this in my own words, I should say that to obtain discovery on the ground of fraud the plaintiff must show to the satisfaction of the Court good grounds for saying that prima facie a state of things exists which, if not displaced at the trial, will support a charge of fraud. This may be done in various ways -- admissions on the Pleadings of facts which go to show fraud – affidavits in some interlocutory proceeding which go to show fraud – possibly even without

admission or affidavit, allegations of fact which, if not disputed or met by other facts, would lead a reasonable person to see, that there was fraud, may be taken by the Court to be sufficient. Every case must be decided on its merits … . The mere use of the word 'fraud' or the prefix of the adverb 'fraudulently' from time to time throughout the narrative will not suffice". And I will add that mere non-use of those words will not be fatal if what is disclosed is in truth a prima facie case of fraud".

Paraphrasing Lord Wrenbury, "the plaintiff must show to the satisfaction of the Court good grounds for saying that prima facie a state of things exists which, if not displaced at the trial, will support a charge of fraud. This may be done in various ways … possibly even without admission or affidavit, allegations of fact which, if not disputed or met by other facts, would lead a reasonable person to see, that there was fraud, may be taken by the Court to be sufficient".

The allegations of fact set out in all the material which I sent to Steep Parish Council on the 24 November 2021 (all of which I forwarded to you and of which you duly acknowledged receipt) have not been disputed and amount to "good grounds for saying that prima facie a state of things exists which, if not displaced at the trial, will support a charge of fraud".

Now that you know of the fraud, any action by the SDNPA which might further the fraud would bring you into the category of persons described above by Fry J in *Cargill v Bower* as being "those who concur in it, who … do something to produce the fraudulent result". If the SDNPA were to do anything which furthers the fraud, that action would show that you concur in the object of the fraud and that you wanted to produce the fraudulent result – namely the development of the Church Road allotments for housing.

You have the power to ensure that this fraud does not come to fruition.

I ask you to take no action, make no decision and give no approval which in practice might further the fraud of which complaint is made in the Statement of Case and the Legal Submissions.

Please could you acknowledge receipt of this email?

Yours faithfully,

Ian Geering QC (Rtd)

25 January 2020