

13.07.2017

BEMBRIDGE HARBOUR TRUST RESPONSE TO PAPER FROM MALCOLM THORPE dated 04/07/2017

BHT SUMMARY:

BHT are disappointed that Mr Thorpe chooses not to disclose full accounting information openly for Bembridge Harbour Improvement Company ('BHIC'), its dealings with associated companies under common ownership, and clarity concerning the terms of purchase of BHIC out of Administration in December 2011. If there is no substance to BHT's concerns there is no reason to resist such disclosures. The periodic provision of limited "numbers" that cannot be reconciled with "numbers" in the published accounts, leaves a fog and does not help clarify the facts or clear the air.

BHT believe it would be in everyone's interest to have "open books" and address the concerns that are demonstrated. On expert advice, the responses given below by Mr Thorpe do not answer the nine questions put to BHIC by the Isle of Wight Council. BHT are surprised that, after 3 months' consideration, these responses and other information released recently, piecemeal did not contain the required information referenced to the questions. IWC has asked for further information.

As we have often mentioned a major difficulty is that, when debating financial data, BHT has not been able to see the source of that data as only the abridged accounts and a few other bits and pieces are available to us. Neither have the IWC had full or open information on which to assess the housing application. What is required is openness by Mr Thorpe providing us all with detailed, and preferably audited, accounts of the Statutorily controlled BHIC, the Harbour Authority appointed by Act of Parliament and given strict rules of financial governance.

BHT trustees are not happy with the repeated use of the word "devious" by Mr Thorpe. Apart from being incorrect it does not help to facilitate reasoned ongoing discussions.

The text of Mr Thorpe's document is shown blue and BHT's responses in black.

Paper given by Malcolm Thorpe – 04/07/2017

As an overall comment, it is to be remembered that the various companies that are involved with the Harbour are all private limited companies and have no obligation to disclose any matters or figures other than those that appear in the public domain, such as at Companies House.

BHT COMMENT - BHT fully understands that a small company has no obligation to publish full accounts.

But under these circumstances we cannot see why there should be any fear of making available full audited accounts of BHIC, the Statutory Body. This is a plea for openness.

Mr Thorpe, at his first public meeting on 31 January 2012 in front of a packed Bembridge Village Hall, just after purchasing the business, said that he was aware that as the finances of the previous regime had been "invisible" he would be holding an annual finance meeting at which the accounts of the Harbour business would be exposed.

There is an obligation in Clause 32 of the Harbour Act for BHIC to provide full accounts (as opposed to abbreviated accounts) to the Department for Transport. So if this did happen they are easily available for BHIC to provide to IWC and BHT.

We fully comply with the 1963 Harbour Act and in particular to clause 31 [where annual revenue exceeds expenses, the excess shall go towards dredging, renewal, construction or improvement

BHT COMMENT: BHT (on expert independent advice) do not believe this obligation has been demonstrated on the evidence and responses given to IWC to date. The IWC have felt it necessary to asked more questions on 26th June. This is discussed later in this document. Open disclosure of accounts and full responses would clarify.

All companies are privately owned between Fiona and myself on a 50:50 basis. I do have an apology regarding the Bembridge Boat Storage company; this company was originally called Tuscan Heights Management Co Ltd that had not been used previously. This company had been set up several years before with one share issued to me. This had been overlooked and hence why our accountants have since been instructed to issue another share to Fiona Thorpe. Our apologies for what is a minor oversight.

BHT COMMENT: In that case BHT were correct at the time of their report, not wrong as was suggested by Mr Thorpe. It is difficult to see how this can have been “overlooked” when a PSC01 (Notice of a person with significant control) form effective from the 28.10.2016 was submitted signed by Mr Thorpe and showing a 75% plus ownership.

BHT has deviously and incorrectly stated that I own more than 75% of BIL. This is incorrect. Attached is an extract taken from Companies House for BIL showing that Fiona Thorpe owns 500 shares and I own 500 shares.

BHT COMMENT: This does not agree with the CS01 form dated 4th July 2016 filed at Companies House and still showing on their website as at the 13th July 2017, the same documentation relied upon in the corporate report. Either the CS01 form was incorrectly submitted, or the shareholding has been changed since, noting the date of the attached as 28.06.2017, however this new record is still not shown on the Companies House website.

From Companies House records (as at today) it appears that from 2012 to 2015 the ownership was 50/50, but the confirmation statement of 4th July 2016 shows Mr Thorpe as sole shareholder with a controlling interest in excess of 75%.

It is possible, that the shareholding has been altered subsequently but it is not showing as yet on the Companies House website. If it has since been corrected then the Caroline Graham report would have been correct at the time it was written, not wrong as suggested by Mr Thorpe

1. Houseboat sales:

I would confirm that all net sale proceeds from houseboat plot sales have been placed into BHIC.

Over the period 01/02/12 > 31/03/2016 net sale proceeds from houseboats achieved £220,077.

Whilst the document attached to Mr Thorpe's e-mail suggests funds were paid into BHIC. It is not clear what these funds relate to. It is not a proper accounting or bank document in context.

Turning to the £220,077 figure mentioned above, it would be normal when the sale of a capital item took place, assuming the funds passed through a solicitor, for the full sale proceeds, net of legal fees and other transaction costs, to be paid to the vendor companies (in this case BHIC and BIL). In arriving at the figure of £220,077 above Mr Thorpe has failed to explain what happened to the £90,000 (he advises as the) cost of the plots to BHIC and deducted from the gross proceeds. The net proceeds due to BHIC should have been £310,077 including this £90,000 with £7,500 going to BIL for the car parking space. If only £220,077 of proceeds were paid to BHIC where did the £90,000 go?

Land Registry documents confirm these transactions, the sale of Plot 20 for £1 to BBS by BHIC then the onward sale to Ms Dowling on the same day for £87,500.

BHIC acquired by a surrender the long lease interest in the whole strip of houseboat plot land for £1, as is evidenced in the surrender document between BIL and BHIC dated 10th May 2012. BHIC's £1 book value for all the houseboat plots raises yet further questions about the way the sale of the houseboat plots has been accounted for. For example, why a cost of £30,000 each plot allocated when the entire strip was bought in at £1. It is still not know if the transaction proceeds were accounted for as a revenue or a capital transaction.

Over the same period our total investment within the Harbour has been £1,031,137 [new pontoons/taxis/workboat/new moorings/dredging/PMSC].

Post meeting conclusion: we have met our obligations contained in clause 31 of the 1963 Act by a multiplying factor of 4.68.

BHT COMMENT: The thinking behind this statement appears to show muddled thinking. Why relate net proceeds from houseboat sales to this hybrid £1,031,137 investment figure in the context of Clause 31 of the Act? Yes, one figure is 4.68 times the other but what does that prove? The £1.03m investment figure, as has been previously stated, appears from Mr Thorpe's own figures to represent the addition of £790k of operating harbour maintenance paid for from the revenues of BHIC over the four years, not capital investment or capital dredging, plus £240k of actual capital investment in the harbour, £127k of which was covered by the depreciation shown in BHIC's accounts. It is comforting that this £1.03m was spent on the harbour. As Mr Thorpe's houseboat 'net sales proceeds' figure is simply cash due to BHIC, as a figure taken in isolation it seems it cannot be relevant to calculations in connection with Clause 31.

Houseboat plot 20:

BHT have deviously and incorrectly tried to show that the net sale proceeds from the sale of houseboat plot 20 completed on 07/04/2014 had not been paid to Bembridge Harbour Investment Co Ltd.

Attached is an extract [Bank Transfer attachment] from a transaction form issued by our bank dated 15/04/2014 demonstrating that the sum of £80,000 [slightly in excess of the net sale proceeds] was paid into BHIC's account on 14/04/2014.

Post meeting conclusion: We have complied totally with both our corporate obligations and with clause 31 of the 1963 Harbour Act.

BHT COMMENT: We note a transfer of £80,000 to BHIC from somewhere is suggested. But what is this amount? Mr Thorpe's net proceeds amount for Plot 20 included in the £220,077 'net sales proceeds' figure is £48,029.

Only a full disclosure would make this clear.

2. Meetings between BHT and BHIC:

BHT has gone to great lengths to show that several meetings have taken place between BHT trustees and the Harbour management.

There have been two such meetings since Xmas 2016; the first when Michael MacInnes attended a meeting with Fiona and myself as a guest of Robin Powell, Chairman of Bembridge Harbour Users Group. MacInnes stated he was present in a personal capacity and refused to answer any questions at all relating to the Harbour's regeneration planning application or relative to the houseboats LDC.

BHT COMMENT: This is a complete misrepresentation of the facts.

At the first meeting there was not a "refusal" to discuss the planning issues; they were simply not on the agenda. In any event it was a Bembridge Harbour Users Group meeting, and not a BHT meeting (Mr Powell who was also present at the meeting for BHUG is not involved with BHT), purely to discuss the restoration of the Bembridge Point Groyne, as was agreed in advance. Mr Thorpe was well aware of this.

The second meeting was with two BHT Trustees on a strictly private and confidential basis at their request – again with Fiona and myself. We never understood their logic on this request. Again both trustees refused to answer any questions at all relating to the Harbour's regeneration planning application or relative to the houseboats LDC.

BHT COMMENT: The matter to be addressed at the meeting was siltation. This was an effort to find common ground and seek a cooperation as a starting point for better ongoing relations. Confidentiality was a joint decision to allow open discussion.

There has been no dialogue at all with the BHT chairman – Mr Gully - since he took office some two years ago; this was his decision.

BHT COMMENT: Dialogue was limited, but is clearly evidenced in copy e mails with Mr Gully and as regards other meetings participants recall and written notes.

Post meeting conclusion: It would appear that if BHT trustees had had an open dialogue with the Harbour and actually discussed matters with us, they would have not only been better placed to work with the Harbour but would also have had a better understanding of Harbour matters without trying to discredit the Harbour and its management in the style they have done so. Hence a meeting with them would be very welcome.

BHT COMMENT: Through our 9 questions in the Caroline Graham report, we sought information which has barely been answered at all to us, or to the IWC. As there is a formal

matter in progress through the Isle of Wight Council planning department it is appropriate that we make our representations direct to them as is the proper process.

[At the two meetings mentioned above, I offered a bottle of scotch or brandy to the first trustee if they can find any positive mention on the BHT website regarding the Harbour and its management, -to date nobody has claimed this prize].

BHT COMMENT: The BHT website was discussed, Mr Thorpe advised there were errors in published documents on the web site and was later invited to identify errors as BHT wished to present accurate information. Mr Thorpe declined to advise any specific errors. BHT Trustees reviewed the site and some Patron detail was out of date, this was corrected. The BHT participants confirm no such wager was made.

3. Legality aspects:

BHT deviously and incorrectly has gone to great lengths to demonstrate that the Harbour and its management are possibly acting illegally on several aspects. Their remarks are inaccurate and incorrect and undeserved.

BHT COMMENT: See the evidence of questions asked and limited and inaccurate responses.

I instructed in March 2011 – several months before the Harbour bid date, Winkworth Sherwood solicitors of London to act on my behalf in the purchase of BHIC and various properties. Winkworth Sherwood have a specialist team who advise many harbours, ports and marinas [such as Hull, Port of London Authority, Great Yarmouth, Cowes, Yarmouth] in various aspects of their individual marine businesses.

They advised me on the following subjects:

- Individual property purchases.

- 1963 Harbour Act and any consequences.

- Corporate matters / relationship between the various companies to work and operate together.

- Banking arrangements that were entered into from all companies point of views.

- Directorships' and statutory duties that include the relationship between the companies.

- Property planning matters.

- Port Marine Safety Code.

- SDLT

As a direct result, Winkworth Sherwood established an overall corporate management and business structure within which all companies operate legally.

Post meeting conclusion: We accepted the advices of Winkworth Sherwood in managing the business as a whole within their recommended legal framework.

BHT COMMENT: It is entirely appropriate that a purchaser, company directors and shareholders seek advice. BHT do not say that the structure of ownership is anything other than legal. BHT simply ask questions about the transfer of funds between companies. The

decisions of management and conduct are of course down to the directors and shareholders not their advisers.

4. Inter-company debt:

As BHT bid for the same opportunity in autumn 2011 – they would have been aware and understood all this reasoning.

BHIC's trading losses from 03/2008 > 03/2012 grossed £376,000 based on an average annual turnover of £447,000; at the date of purchase their total debt was £1.2million.

BHT COMMENT: Mr Thorpe's comment about the BHIC £1.2m loan is incorrect. BHIC's accounts at 31st March 2011 (signed off 25.02.2012) do not show any £1,200,000 indebtedness as stated. The £1,200,000 debt is only apparent in the 31st March 2012 accounts. The Administrator for BHIC was appointed on 12th April 2011, 12 days after year end. It is unlikely the £1.2m loan was taken on by the then Directors of BHIC during those twelve days so as to be in place when Mr Thorpe purchased BHIC in December 2011. BHT again request that Mr Thorpe makes public the balance sheet of BHIC that he purchased for £1 from the Administrator in December 2011.

Hawk paid £1.2m in satisfaction of the secured debt of BHIC to their bank as part of overall purchase consideration of £2.1m so ensuring that we retained the 1963 Harbour Act.

BHT suggests incorrectly that Hawk makes profit from this arrangement and reduces BHIC's profits. If BHIC had been in the situation of continuing to trade, the Company would have paying interest in financing such a huge debt to their bankers. It was imperative to retain the 1963 Harbour Act and based on advices from Winkworth Sherwood, decided that Hawk would replace the debt position of the bank with our own resources. Hence Hawk loaned BHIC £1.2m. The outcome on interest cost is exactly the same as if BHIC had an equivalent loan from the bank.

BHT COMMENT: Mr Thorpe states above "Hawk would replace the debt position of the bank with our own resources". It is clear that there are bank borrowings, but it appears they were borrowed from the Bank in order to lend to BHIC. It is not clear what resources of "our own" were introduced into BHIC? Please explain.

It would seem that this debt was part of the financing of the purchase, it is more usual for the buyer to pay the cost of borrowing of a purchase, not the Company acquired, as it appears here? An open disclosure of the terms of the transaction would clarify.

Hawk makes no profit or has any benefit in this banking arrangement.

BHT COMMENT: BHIC's profits are reduced as a function of paying interest to Hawk and Hawk's profits are increased as a factor of receiving that interest.

Post meeting conclusion: This was a normal banking arrangement, very simple and straight forwards. For BHT to suggest otherwise is incorrect. Winkworth Sherwood were fully involved with the arrangements.

BHT COMMENT: Solicitors may advise, but ultimately take instructions form the client.

5. Post acquisition trading by BHIC:

BHT has stated that BHI has an annual mooring income of £690,000.

BHT COMMENT: No; that is incorrect. BHT has quoted the Government's own valuation services expectation of income from the facilities in the Harbour in their Rating assessment (copy available).

Living in the real world as we do managing the Harbour, this is totally incorrect and can best be demonstrated by the annual operating trading turnovers shown in our public accounts:

Year ending	03/2013	£586,778
	03/2014	£579,424
	03/2015	£602,309
	03/2016	£518,787.

The average annual operating trading turnover is £571,824 and not the 20% uplifted figure suggested by BHT.

BHT COMMENT: It is not clear what is meant by "operating trading turnover". For instance does it include houseboat plot sales (which appear to have been treated as trading items) and other incomes such as Harbour dues.

The annual incomes in 2013 to 2015 appear very consistent. There is a significant fall in 2016. This is not consistent with Mr Thorpe's public statements of increasing business including the note at the foot of his text "*The Harbour has got busier and hence the needs for the beneficial works are now greater*".

As "turnover" is not published in the abbreviated accounts at Companies House, there is no reference to check these figures. Disclosure of BHIC full accounts would answer the questions raised.

Post meeting conclusion: BHT is deviously stating misleading comments.

With regards to the net annual operating trading profit made by BHT:

Year ending	03/2013	+£56,519
	03/2014	+£37,071
	03/2015	+£67,014
	03/2016	+£55,495

BHT COMMENT: The "*net annual operating trading profit*" are not of course identifiable in the published accounts so we assume these figures are trading incomes less direct costs. However, it is interesting to note that for the four years from 2013 to 2016 the net trading profit as per Mr Thorpe above was £216,099 whereas the published accounts show accumulated losses of £97,518.

Adding the two together comes to £313,617 and by calculation this figure must be other non-trading costs such as taxation, interest (to Hawk?), management fees, director's fees or even dividends.

Disclosure of the BHIC accounts would show the real profitability of the harbour business.

Post meeting conclusion: Whilst BHIC has become a viable commercial business during the past 5 years, it does not have the necessary income stream to raise finance to provide the benefits that can accrue as a direct result from this enabling development. The business has been stabilised and is viable, has managed to increase its annual trading figures and sees further increases in both tourism and local community boat ownership in the future. Should the resolution to grant consent not be forthcoming, the overall business will undoubtedly suffer – we are in a service industry where our customer base will move their boats to alternative locations at a whim and we need to provide the best customer service we can. At present we are not achieving the very best customer service that we should be - I can foresee that if we continue as at now, we will lose customer profile.

BHT COMMENT: There is no obvious cash or measurable trading benefit for BHIC within the current planning proposal, a few extra toilets and a new office are unlikely to significantly boost trade on their own. We note that the “overall business” may suffer, this may be because BIL (the beneficiary of the planning application) may suffer. If BIL anticipate a profit to redeploy, beyond that illustrated in their viability appraisals, the application is based on a false premise as the “Enabling Development” argument critically relies on there being only enough profit to secure the specified improvements. BIL are not the Harbour operating company and without entering new legal commitments have no obligation to disclose or redeploy profits from the development.

6. Rent paid by BHIC:

BHIC pays an annual rental charge of £18,000.

BHT COMMENT: This is useful. However, the figure for rent was requested by IWC last year and again in February this year, but only just produced. It is noted that the funds are paid to Hawk who are not the owners of the land and buildings. No licence that would authorise that payment or historic record has been provided.

BHT has stated figures of £88,291 for this service that are incorrect.

BHT COMMENT: We are uncertain where this figure is derived from. However, we were unable to identify the rent from the abbreviated accounts provided.

Management charges paid to Hawk:

These charges pay for the services of MPT and FET, substantially below any fair market value.

Post meeting conclusion: BHT attempt to amalgamate the above figures in a manner to add confusion.

BHT COMMENT: No, BHT simply quote figures as they appear in the published accounts of BHIC and Hawk. BHT are concerned that rent and management charges are not shown separately for clarity.

7. Part of our Statutory obligations:

Within the 1963 Harbour Act there are requirements for both DfT and IOWC to receive the Company's annual accounts and balance sheet [clauses 32(1) and 42(3)].

For instance clause 42(3) states: "The Company shall within three months after the date on which their annual accounts are made up send an abstract thereof to the County Council together with a copy of the balance sheet". This is complied with and receipts are obtained from both organisations in return.

Two such receipts are attached to show compliance with this obligation.

BHT has deviously tried to disprove that BHIC have not complied with this obligation.

Post meeting conclusion: This obligation has been complied with every year for which we receive a receipt.

BHT COMMENT. For completeness, Section 32 -1 of the Act requires "annual accounts and balance sheet" be provide to the Minister (as opposed to abbreviated accounts). We have suggested that copies of these full accounts should be made available to IWC and BHT.

9. Overage clause for planning purposes:

BHT go to great lengths to deviously and totally incorrectly show that the applicant has 'strongly resisted the inclusion' of an overage clause.

BHT COMMENT: Please refer to the planning files, the correspondence clear. Drafts of s106 documents are published and there is no suggested drafting as would be expected if the applicant was accepting this provision.

In May 2016 the principle was agreed and the drafting potentially subsequently agreed in July 2016 – although it does now require some slight amendments to reflect the DVS report.

BHT COMMENT: See Mr Thorpe to Wendy Perera 08.05.2017 timed at 08.01 "There should be no requirement for any overage clause"

Mr Thorpe to Wendy Perera 09.05.2017 timed at 9.19 ...existing draft s106 "Minus any overage clause" "if still needed we need to meet"

The applicant has no problems with such a clause.

BHT comment: The applicant as had over 17 months to agree this, and may finally have agreed. BHT would suggest only due to pressure.

Post meeting conclusion: We see the inclusion of such an overage clause as being acceptable.

10. Summary:

As demonstrated we comply as far as we are aware entirely with the 1963 Harbour Act.

BHT COMMENT: Based on the answers received to date we do not accept this is demonstrated at all.

The simple publication of full accounts of BHIC would clarify for all concerned.

As demonstrated we comply as far as we are aware entirely with Company Law.

BHT COMMENT: Based on the answers received to date we do not accept that this is demonstrated.

The simple publication of full accounts of BHIC would clarify for all concerned.

We were prepared to buy an ailing business, invest huge sums of money in advance to encourage boat owners to use the facilities; and we have proved that our business plan works and is viable.

BHT COMMENT: No “huge sums of money” appear to have been invested, in large part only redeployment of incomes, as opposed to external investment.

What business plan?

The outcome is that Bembridge Harbour has become a destination for yachtsmen; this has not only benefited the Harbour but also Bembridge and St Helens. We are prepared to invest even further large sums of money in our quest to make the Harbour successful by way of this planning permission.

BHT COMMENT: If there is an intention to invest “even further large sums of money” BHT question where the funds are to come from.

If this is to come from the Housing development, there are serious questions to be asked. If the costings submitted are correct then there is no further profit. If the costings are incorrect and there is additional profit, the application is on a false premise and would breach Enabling Development guidelines.

If “even further large sums of money” are available from elsewhere, such as houseboat sales, then why are they not being used to create the improvements and other really needed infrastructure works, groynes, dredging, or genuinely visitor boosting attractions?

If houses were really necessary BHT believe that far fewer houses would fund improvements, and in the process not displace existing assets including carparking and visitor amenity space. It then follows that even fewer are needed as the likes of a new remote carpark, adding only 3 extra spaces is no longer needed.

If more investment is actually on offer then BHT would repeat the call for a stakeholder influence 10 year plan for everyone to rally around support and even contribute towards.

BHT’s obvious concern is that profits we anticipate are not openly shown and that funds due the Harbour, under the principle of enabling development, may leave it under a cloud of

secrecy. BHT obviously accept legitimate profit incentives, provided they are openly disclosed.

At the same time, we want to improve standards of hygiene within the Harbour with the free provision of sewage treatment plants to the houseboats – again even more investment. This is the opportunity that the Harbour has been wanting for at least two if not three decades.

BHT COMMENT: Again this is not capital introduced, but simply the redeployment of (only some) of the sale proceeds. BHIC are already obliged, under the Act, to reinvest all surplus in any event.

And at present these plans are being held back by BHT - a group of some 180 people representing less than 0.05% of the local population.

BHT COMMENT: Plans are not held up by BHT, IWC has asked questions, most recently on the 26th June, that they consider proper in the context of the application, and satisfactory answers have not yet been provided so far as we are aware.

Members include many individuals and organisations, and BHT work closely with them. A view of the planning file illustrates the weight of feeling in the community and the concerns of many responsible organisations.

At the planning committee meeting on 01/12/2015, the LPA Officers presented a fully detailed proposal with a recommendation for approval. The Committee resolved to grant planning permission “having taken into consideration and agreed with the reasons for the recommendation”.

The Head of Planning has stated in an email dated 22/07/2016 that the planners intended to report back to committee, commenting that “The report for planning committee is an update report and is not an opportunity to review the outcome of the decision”.

Since the date of the original resolution, none of the details of the scheme have changed nor been altered – none of the financial background to the business have altered, none of the management have changed. Indeed, the whole package is the same as at the December 2015 meeting 18 months ago, bar one item:

“The Harbour has got busier and hence the needs for the beneficial works are now greater”.

BHT COMMENT : The figures quoted by the Mr Thorpe at point 5 above suggest the Harbour has actually got quieter?

ALL QUERIES WOULD BE ANSWERED BY OPEN PUBLICATION OF BHIC’S ACCOUNTS TO THE ISLE OF WIGHT COUNCIL AND BHT. IF BHT’S CONCERNS ARE UNFOUNDED THEN THERE IS NO DOWNSIDE TO PUBLICATION.

Jeremy Gully

As Chair Bembridge Harbour Trust

11.07.2017