

**From:** Jeremy Gully

**Sent:** 02 April 2019 13:20

**To:** 'Malcolm Thorpe'

**Cc:** 'Liz White' 'Bembridge Parish Council Clerk'; 'Mike Samuelson' 'The Powells' 'Tyndall, Brian' <Brian.Tyndall@IOW.GOV.UK>; 'Murwill, Michael' <Michael.Murwill@IOW.GOV.UK>; 'Paul Kenny'

**Subject:** RE: Promises on allocation of incomes

Dear Malcolm,

Thank you for your email of 20<sup>th</sup> March. I also note your email to BHUG of the same date, and their response.

We do not accept that we say anything *“unwarranted and unfounded”* or that we *“continue to distort”* your comments as you assert. We have accurately quoted you /BHIC.

Because of your assertion we are referencing each quotation in the section “Further Detail” below where we provide full references in the text. To save any misunderstanding these direct quotations are identified in blue italics and quotation marks.

Our key conclusions drawn directly from your statements are set out in 1 to 8 below.

- 1) You undertook to finance and install sewage treatment plants for all houseboats existing before 2011 which do not have them from the proceeds of houseboat sales beyond the 25 existing as confirmed by the CLEUD (sometimes referred to as an LDC) [email to IWC 16<sup>th</sup> May 2017]
- 2) You have now downgraded this to *“sewer treatment systems or holding tanks”* [20th March 2019 email to BHUG]
- 3) You have now introduced a new condition that such contribution is conditional upon permission being secure for 32 houseboats, being 7 more than consented in the CLEUD.
- 4) You further undertook that you would require all new houseboats to have *“sewage treatment facilities”*, [ Emails to Russell Chick 12<sup>th</sup> July 2017 & 18<sup>th</sup> August 2017] before occupation we understand you have not required this of plots 3 and 4 or “Rinjstroom” on proposed plot 23.
- 5) You gave the IWC and undertaking [Email to Russell Chick 15<sup>th</sup> Nov 2017] to enter a legal agreement that funds from sale of houseboat plots would be reinvested in the harbour. You have not provided such an agreement for the current application for two new houseboat plots.
- 6) In a submission to the IWC you stated that your plans were to apply funds form houseboat plot sales to repair of Bembridge groyne [ 16<sup>th</sup> May 2017]. You now advise, for the first time, that you do not foresee applying any of these funds to the Groyne.
- 7) Your position on non-disclosure of Harbour income and expenditure is clear. We make three observations:
  - i) In your response to 20<sup>th</sup> March to BHUG you refer to enquires *“for BHT’s benefit”* whereas the request has also been made by BHUG, BHAG and at a Public meeting chaired by Sir Paul Kenny.
  - ii) In your response to BHAG’s email to you of 6<sup>th</sup> December 2018 you have said you have never been asked to disclose details of management accounts or detailed figures in your other companies in the past. This misses the point; the harbour company is a Statutory Body with public duties and responsibilities. Government

Guidance for the Good Governance of Ports of March 2018 directs reasonable transparency, as you are aware.

- iii) We note that you stated that you had no objection to complying with type of disclosure now set out in this guidance initially. On becoming owner at the first Public meeting you promised “open books”.

Further, in connection with the s106 agreement on the residential development:

- 8) You undertook in a formal legal submission to the IWC of 28<sup>th</sup> July 2017 to apply the developer’s 20% profit from the residential scheme towards repayment of £1.2m debt owed by the Harbour Company to another company owned by you and Mrs Thorpe (Hawk Property Development Company Ltd). You have not offered a legal agreement to give effect to this. This is important as BHIC claims not to be able to afford improvements - and such lack of funds was your justification for building houses on land in harbour use. You advised the cost of interest was 7% on this loan which would result in an annual charge of £84,000.

Again, BHT plead for more openness, consistency and a forward-looking management plan as requested over a long period. We hope for a change your current direction so that you can actually bring forward the important objectives of good water quality and groyne repair, as well as other critical dredging and maintenance - all items you support and that would surely be priorities in any management plan.

Acting as director of the Statutory Body, you must agree that these are positive benefits for the Harbour and are best secured through legal agreement binding the Harbour Company. This is because individual officers and control of the company can change and competing pressures lead individuals to change their minds.

Yours Sincerely  
Jeremy Gully as Chair Bembridge Harbour Trust

## FURTHER DETAIL

### BEMBRIDGE GROYNE

#### 1. Your recent statements re. funding:

You say that: *“do not foresee any of the capital receipts from houseboats plots being allocated to the Bembridge Groyne”* (email 20<sup>th</sup> March 2019 to BHT) and that you *“have given no commitment as to using any such capital income towards the groyne works despite Mr Gully’s attempts to distort previous statements of mine”*. (email 20<sup>th</sup> March to BHUG)

*BHT comment*

These statements of the 20<sup>th</sup> March suggest you do not now intend to offer a legal agreement on use of the funds released from additional houseboats (neither from 2 past sales, outside the CLEUD 25, nor proposed plots 3 and 4) in the interests of the harbour at all, for any specified Harbour purposes.

BHIC's submission to the IWC as planning authority on 16<sup>th</sup> May 2017 informed the council that the Groyne was one of two objects for your funding.

*"Should we be able to achieve a greater number of additional houseboat plots, our forward plans for such surplus money is in two directions:*

*1 We have received an approach from the Bembridge Harbour Users Group which is being shadowed by BHT to allocate funds to carry out maintenance on the Bembridge groyne; such repair work will require substantial funds."* [Item two referred to a possible dredger purchase]

Similarly, your statement to IWC of 15<sup>th</sup> November 2017 identifies the groyne as one of two objects for the receipt of funds.

*"On the sale of these newly designated houseboat plots, we have given an undertaking to the local planning authority, **which will be part of a legal agreement**, that any deemed excessive surplus will be reinvested into the Harbour, such as for the groyne or additional dredging."*

BHT note that no specific number of houseboats was referred to and that to date you have not agreed any financial contribution to the Groyne project, other than 1/3 of engineer's fees, if incurred - some £4,000.

## **HOUSEBOAT SEWAGE TREATMENT**

### **2. Your statements 20<sup>th</sup> March re. funding / provision.**

That whilst you *"have given a commitment to install free of charge to all houseboats moored in the Harbour pre-December 2011"*

You add that *"This will be subject to an overall caveat that we obtain satisfactory planning permission for an aggregate of 32 houseboats in total".* (Your email 20<sup>th</sup> March 2019 to BHT).

Your email to BHUG of 20<sup>th</sup> March 2019 states *"I would confirm that the Harbour's priority as regards houseboats is to install free of charge sewer treatment or holding tanks"*

#### *BHT comment*

As a director of the Statutory Harbour Authority, you now appear to make ANY resolution of the sewage issue entirely dependent on securing consent for no less than 32 plots, and do not offer a legal agreement in connection with proposed plots 3 and 4. This is against the following background:

- The Bembridge Parish Council's planning committee is on record as saying that 28 plots would be the maximum they would expect to support when they debated P/00328/16.

- Incomes from plots beyond those consented in the CLEUD already approach £200,000 as the proceeds for plots 18 and 23 and will include a further £160,000 gross if plots 3 and 4 are consented. Some £360,000 in total.

Your comments beg the further questions:

a) You state *"the Harbour's priority as regards houseboats is to install free of charge sewer treatment or holding tanks"* (your email 20<sup>th</sup> March) However, funds plainly have not been so prioritised.

b) If no works are to be carried out except *"subject to an overall caveat that we obtain satisfactory planning permission for an aggregate of 32 houseboats in total"* (your email 20<sup>th</sup> March to BHT) Then what happens to the *"part of the capital receipt from these two sales "* (your email 20<sup>th</sup> March to BHT) which you referred to as being *'utilised'* for Houseboat sewage works?

c) What will happen to these funds if say 28,29,30 or 31 plots are eventually consented, rather than the newly declared threshold of 32?

These recent written statements (20<sup>th</sup> March) appear in conflict with the formal submissions to the planning department of the IWC and the Parish Council in connection with planning applications, in particular as part of a justification for the need for housing scheme under P/00637/14, suggesting any proceeds from houseboat sales would not be available to fund new wash/office facilities as they were pre-allocated to improvements which you listed as including sewage treatment, dredging, the groyne as well as the possible purchase of a dredger.

On the specific topic of sewage, it was clearly understood by Mr Chick (the planning officer for the residential scheme) that sewage treatment would be dealt with from the proceeds of additional plots (without any specific threshold) as set out in his email to you of the 6<sup>th</sup> December 2016 where Mr Chick says:

*"You say that the returns from new houseboat plots would be used to fund new **sewer systems** for the **existing and proposed houseboats** in order to cease the current situation whereby sewage is discharged into the Harbour"*

This, the Isle of Wight council's understanding of your proposition, obtained from your formal planning submissions, is in direct conflict with your statement on the 20<sup>th</sup> March 2019 in regard to regard to any **proposed plots** (as opposed to pre 2011 only) and **sewer systems** (as opposed to "or similar", defined as "holding tanks" in your planning comment of the 7<sup>th</sup> January and 20<sup>th</sup> March.

For example: at points 2) and 5) in your email to BHT of the 20<sup>th</sup> March 2019:

*"We have given a commitment to install free of charge to all houseboats moored in the Harbour pre-December 2011 a sewage treatment plant or similar if they do not have any such existing system" and we note that you stated that " We have no obligation to installing such systems into new houseboats on plots 3 and 4"* However, you did say you would require all new owners to install such systems.

In your email of the 16<sup>th</sup> May (see Further Sources and Quotations, below, at iv) you gave the cost of treatment plants, not black water storage tanks only. This is in line with the undertakings provided 16<sup>th</sup> May *"fit sewage plants and systems"*, 18<sup>th</sup> August *"dedicated sewage system or plant"* and 12<sup>th</sup> July *"sewage treatment facilities. Our proposal will be to fit such systems"*.

Clearly a "storage tank" is not a treatment facility, system or plant. Reliance on the treatment of Black water only via a tank would represent back tracking on your undertakings on behalf on the Statutory Harbour Authority to provide meaningful and economic sewage treatment.

It is noted that the owners of two further pre 2011 houseboats have recently independently ordered treatment plant. This will leave 10 houseboats out of 25 legitimate ones without provision.

It is noted that you say any new houseboats have an obligation to deal with sewage treatment [ references above]. However, you have allowed siting and occupation of "plot" 23, which is in addition to the CLEUD 25, to be occupied long-term without sewage treatment or planning permission. Similar sewage concerns apply to several "live aboards "on Selwyn pontoon despite your clear statement to BHAG 10<sup>th</sup> May 2016 that *"they are required to have a working sewerage processing/storage plan in place"* and which, bar one purpose built houseboat, do not.

i) Statement by you to Mr Chick, 15<sup>th</sup> November 2017:

*"It is widely known that post the LDC determination, we will be submitting a planning application for some new houseboat infill plots that will also include obligations for us to install free of charge sewage or holding treatment plants to existing houseboats where raw sewage is pumped directly*

*into the Harbour by most of the houseboats – this application has not as yet even been registered by the LPA.”*

ii) Statement by you in Minute of Bembridge Harbour Advisory Group 6<sup>th</sup> Dec 2018:

*“MT confirmed that now the long-awaited decision had been promulgated, a follow-on planning application for additional houseboats to include individual sewage treatment systems to be fitted free of charge to the older houseboats would be made in late January/early February.”*

See: FURTHER SOURCES AND QUOTATIONS below for additional references.

*BHT comments:*

BHT say it would not be credible for BHIC to claim that this application for two additional plots would not be the subject of the undertakings to reinvest. They are part of the additional plots sought beyond the 25 consented in the CLEUD.

This conclusion is most recently reinforced by a statement at Bembridge Parish Council planning committee 15<sup>th</sup> January 2019: When speaking in support of the subject application you stated that *“this will allow us to start dealing with sewage treatment”*.

However, it appears from the written statement 7<sup>th</sup> Jan 2019 in support of this application that BHIC does not intend to honour that obligation in respect of this application. Instead it states:

*“our next stage is to submit our own planning application for a further five new houseboat plots as well as giving a commitment to install free of charge individual sewage plants or holding tanks to all existing houseboats that currently deposit their sewage directly onto the seabed.”*

There is no basis for not honouring the commitment on this application. These two houseboats (plots 3 and 4) are additional to those covered by the recent CLEUD, exactly as anticipated by BHIC.

Further it is noted that BHIC proposes a reduction in the financial and ecological value of the pledge. This is signalled by reducing a commitment from *“sewage treatment”* to providing *“ or holding tanks”* which are far more expensive to run requiring frequent emptying, but far cheaper to install and, as you advise, will not deal with grey water waste.

## **FINANCIAL TRANSPARENCY**

**3. You state that you *“will continue to retain our financial records in total confidence”* [BHAG letter 10/01/2019] on the basis that you are responsible for the management of a *“minnow harbour”*.**

*BHT comments*

This failure to provide the “key principles of openness and accountability” and structured management safeguards within the directions in the Government’s ‘Ports Good Governance Guidance’ applying to all Statutory Harbour Authorities such as BHIC Ltd, continues to cause grave concern.

## **FAILURE TO ANSWER DIRECT QUESTIONS**

**4. BHT raised two simple questions that you failed to answer, questions a) and b) set out in BHT email of 15th March 2019:**

*“a) [Can you confirm that] You will unilaterally offer a legal agreement (s106 planning agreement), setting out the allocation of net proceeds, in connection with the current application for ‘Plots 3 and 4’ [P/01338/18] and so advise the LPA?*

*“b) And if so, will you set out what works will funds be allocated to and what deductions you anticipate making in arriving at the net proceeds available (beyond £2,500 x 2 to BIL for houseboat parking spaces, legal sale fees and agents’ sale fees).”*

Your only responses in the email of the 20<sup>th</sup> March 2019 that appear to be related are:

That any sewage works *“will be subject to an overall caveat that we obtain satisfactory planning permission for an aggregate of 32 houseboats in total”* i.e. quite possibly no contribution will ever be made and you remain silent on a legal agreement in connection with proposed plots 3 and 4.

You also say *“As regards your request for commercially confidential information, we do not propose to disclose any such detail to you”* and *“BHT has no standing to request or subsequently receive any such information”* and that *“We would be grateful if you would cease from requesting any financial information from us in future”*

## FURTHER SOURCES AND QUOTATIONS

i) BHAG 13<sup>th</sup> Sept 2016: Re houseboat sewage systems *“each which would be paid by the Harbour Company out of any profit made from selling off up to 6 new berths [ BHT note no threshold, but “up to 6”]*

ii) STATEMENT BY Mr Thorpe in update on BHIC website 18<sup>th</sup> August 2017: *“Our planning application [for additional houseboats] is very important to achieve as it will include the contractual obligation on the Harbour to design and install in all houseboats that have been moored in the Harbour pre-2011 a dedicated sewage system or plant at the Harbour’s cost. This has to be a major benefit to all Harbour users. [BHT notes “sewage system”]*

iii) STATEMENT BY Mr Thorpe to Mr Chick of the LPA 16<sup>th</sup> May 2017 submission on P/00637/14: *“From the sale of these new plots, we will then be able to design, supply and fit sewage plants and systems in those houseboats that do not have any such systems currently in use” [ BHT note “plants and systems”]*

iv) STATEMENT BY Mr Thorpe for BHIC 12<sup>th</sup> July 2017 email to Russell Chick of the LPA submission on P/00637/14: At 2. f) Confirming all new houseboats must self-fund and *“are required to fit sewage treatment facilities. Our proposal will be to fit such systems in all houseboats”* [BHT note “treatment facilities” and facilities” and “systems”]

v) Mr Thorpe goes on to refer to figures provided by Mr Gully that relate to **sewage treatment systems** (not storage tanks) and their installation: STATEMENT BY Mr Thorpe email 16<sup>th</sup> May to Mr Chick submission on P/00637/14: *“Based on figures given to us for the houseboat Samphire [Mr J Gully] such an installation costs in the region of £3,750/4,000 plus commercial labour rates and design input, say £5,500 per houseboat plus 15% contingency”.*

vi) STATEMENT BY Mr Thorpe email 16<sup>th</sup> May to Mr Chick submission on P/00637/14: *“Based on figures given to us for the houseboat Samphire [Mr J Gully] such an installation costs in the region of £3,750/4,000 plus commercial labour rates and design input, say £5,500 per houseboat plus 15% contingency”.*

vii) STATEMENT BY Mr Thorpe in update on BHIC website 18<sup>th</sup> August 2017: *“Our planning application is very important to achieve as it will include the contractual obligation on the Harbour to design and install in all houseboats that have been moored in the Harbour pre-2011 a dedicated sewage system or plant at the Harbour’s cost. This has to be a major benefit to all Harbour users. [BHT note “dedicated sewage system or plant”]*

**2<sup>ND</sup> APRIL 2019**